

The Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities

Full Commission Meeting – July 11-12, 2011

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>> CHAIRWOMAN DIETRICH: Hello! Good morning! We actually have sound this time. That's good. Is it too loud, George?

>> GEORGE KERSCHER: No, it sounds from heaven.

>> CHAIRWOMAN DIETRICH: So I would like to welcome everyone to our meeting on the accessible instructional materials in postsecondary education commission meeting here at the ahead conference. I am pleased to see everyone here this is our last in-person meeting of the Commission. So I will really encourage the Commissioners If you have any questions at this point, if you have been sort of holding back a little bit,

feeling shy, thinking everybody else knew more than you do, please, this is the time for you to ask those questions as we go through the day and make sure that your views are heard.

So I want to start out by thanking very much CAST and Skip Stahl, Mary, Scott, all of the people working so hard at CAST on this. And I would like to thank David, our designated official and Elizabeth for all of the work they've been doing behind the scenes for us. It's been a huge effort to get this Commission off of the ground

(Applause)

And just as a reminder and for those who may be new in this process, the Commission was set up under the auspices of the Higher Education Opportunity Act, and what we are charged with is reporting to Congress on the barriers to access and recommending systemic strategies to improve access for individuals who have an inability to access print in standard manner.

It's the Commission's first meeting was at the end of September in 2010, and we have exactly one year to complete our report which is not a lot of time. We're on a really short timeframe. I don't know about anybody else, but I am definitely feeling the creep of time as we go through this. So I am hoping that we can manage to stay on task today because time is so short. If anyone gets into sort of a circular discussion, or if there gets to be a lot of cross-talk back and forth between a couple of individuals, I am going to reserve the right as Chair to give you a time limit on that, or to summarize it for you with your agreement and then move on because with not having a lot of time to really have anything go in a circle. As long as it's moving forward, we're fine. But we can't circle on things any more.

We are asked to look specifically at how we can improve the timely delivery and the quality of these materials for postsecondary students. That is really the bottom line of what we're doing here. How can those students get their materials more quickly and more accurately than what we're currently

doing.

So that's really important I think that we keep that in mind. Also that we keep in mind, as Dr. Martha Kanter said when we were sworn in that we can't solve everybody's problems. We can't solve K-12's problems. We're here to focus on the colleges and the universities to see if we can do something to contribute to solving their problems. So I think that we really need to keep that focus in mind, and also to remember that just presenting to Congress a document that says there are problems is not helpful. And this is what we are to do. So if we're sending back a document that says Congress should research this, that's what this Commission was set up for is to do this research. So I will really encourage us to think about that in terms of we need to be very clear about saying where things are, where we would like them to be, and some strategies for helping to get them there.

So, again, I thank everyone, and to the AHEAD organizers to work with CAST to provide us this space. Now I will turn this over to my vice chair.

>> VICE CHAIRMAN WENDORF: Good morning, folks. I will be brief. Gaeir has hit on the key points. The focus on the charge is particularly important as we talk about the recommendations which will occupy us today and tomorrow, and we keep going back to those to guide us as we seek consensus or clarify disagreement. I'm reminded as I read through the charge, and as I read through the document in preparation for the meetings, I thought back to our first meeting, and I believe it was Andrew, and it was your comment, Andrew, about you stated that it was your hope that as the work of this Commission went forward, that we would ensure that it was a student-focused, student-centric set of recommendations that made sure that students' needs were our focus, and solutions aimed at improvement and addressing those needs was what we should be looking at.

So I kept that in mind as I went through the text. It's given me things to think about, not so much as Vice Chair, you a also as a member of this Commission. And I look forward to the discussion that we'll have and I appreciate all of the work that's gone into this so far. I'm also very aware that we have a long way to go before we can say that we either have consensus or that we've absolutely clarified the lines of disagreement. Okay? So thank you.

>> CHAIRWOMAN DIETRICH: I would like to introduce David who is our designate federal official for the Commission.

>> DAVID BERTHIAUME: Yes, Gaeir, good morning. I just wanted to say and echo the thoughts of the Chair and the Vice Chair. Welcome, everyone, to Seattle. Thank you all for making the trip out here. This is a very important meeting for us as we work through the list of recommendations that we attempted to put together, bring together the thoughts of our different task forces, and we're moving now from a task force-based framework to the whole Commission and having the whole Commission weigh in as we work over the next couple of months to finalize the report. So it's very important meeting, and we look forward to a really productive one.

And I will turn it back to Gaeir now for the roll call, and an overview a little more after overview of the next two days. Thanks

>> CHAIRWOMAN DIETRICH: Thank you, Dave. I would like to us go around the table, please, and have you introduce yourselves. Tell us who you are, please, and who you represent on the Commission, and Tuck can we start with you?

>> TUCK TINSLEY: I represent the American Printing House for the blind in Louisville, Kentucky.

>> ANDREW FRIEDMAN: I represent learning ally formerly recording for the blind and dyslexic. I have been asked how long I have to say that and we think 10 years is the term.

(Laughter)

>> BETSEY WIEGMAN: Hi. I am with the U.S. Department of Education's Office for Civil Rights, And I represent assistant

secretary for civil rights.

>> MARK RICCOBONO: Good morning. I am representing the National Federation of the Blind.

>> KURT HERZER: I am private citizen, and rip myself and I am a medical student at Johns Hopkins.

>> JIM FRUCHTERMAN: I am the head of Bookshare. I am here as a special government employee, but also spend a lot of time working on book access for people with print disabilities.

>> CHESTER FINN: Hi. I am representing the National Council on Disabilities.

>> J. BRUCE HILDEBRAND: American association of publishers, Washington, D.C.

>> DAVID BERTHIAUME: Executive director and designated federal official.

>> CHAIRWOMAN DIETRICH: From the California community colleges. I am director of the high-tech center training unit. I represent the two-year colleges and I am the Commission Chair.

>> VICE CHAIRMAN WENDORF: I am with the national center for learning disabilities.

>> MARIA PALLANTE: Hi, everyone. I am the direct dlvr the United States copyright office and I have been chairing the legal task force.

>> SKIP STAHL: From CAST.

>> GLINDA FOSTER HILL: From the U.S. Department of Education, Office of Special Education, and rehabilitative services. I am representing our assistant secretary Alexa Posney.

>> GEORGE KERSCHER: I am an independent, but I am employed by learning ally, and I work on standards with the DAISY consortium, the international publishing forum, and that's the EPUB forecasts, and with the W3C on standards.

>> LINDA TESSLER: I am representing myself, and also the learning disabled community. I would like to take a moment to mention Jim Button, the man who organized and was one of the first organizers of our conference. This was a baby to him. I

understand he was very passionate about this work, and that important pieces came out of it. This is a very important meeting. I think we all know it. There are pieces that need to be addressed, and we need to get the work done especially in his spirit. He believed so much in what we're doing, and he asked me if I would accept the position. I am sure he did for others.

>> ASHLEE KEPHART: I am representing myself. I am a student at Hamline University in Minnesota.

>> STEPHAN HAMLIN-SMITH: I am with the executive director of the association on higher education and disability.

>> LIZANNE DeSTEFANO: I am a faculty member at the University of Illinois, and I am representing four-year institutions.

>> CHAIRWOMAN DIETRICH: Thank you. I'd also like to welcome everyone who is with us on the phone, and I know I've gotten e-mails and calls from people. We have quite a phone following for these meetings, and I just want to let everyone on the phone know that if you would also like to connect through iLinc so that you can see slides presented during this meeting, you can go to <https://AIMPSC.ilinc.com/join/yvbmysr>.

If do you have questions or comments for the Commission as are you listening in, we encourage you to e-mail those questions to PSC@CAST.ORG. And also if at any time you or your students or people who are concerned about these issues have a story that they would like to share with the Commission, again you can send that to PSC@CAST.ORG.

Okay. So as we go through the next two days, we are going to having a few guest speakers, but we will also spend most of the Commission's time looking specifically at the issues that we're dealing with, at the recommendations document that Skip Stahl of CAST put together for us, which I want to reiterate is by no means a final document. It is a working document. And it is something that has been pulled from the work of the task forces. At this point we're really done with the task forces. The task forces did their job, and now everything that's

deliberated on will be deliberated on by the full Commission.

So as we go through, we're going to be looking at these recommendations and discussing them at length. Also just a reminder that tomorrow afternoon, Tuesday afternoon, we are having public comment, and if you know anyone who would like to make public comment, then please have them talk with Skip Stahl of CAST, and he can arrange to get them on to the schedule so that they have an opportunity to make public comment. Also, those of you listening on the phone, we will take public comment from the phone as well as in person, and we've had some really quite wonderful public comment on the phone. So I am going to encourage people to do that let us know what your ideas are on this process.

Now, I would like to turn it over to Skip Stahl of CAST who will update us on the final report.

>> SKIP STAHL: Great. Thank you, Gaeir.

So what I am going to do is just talk a little bit about our current working timeline for the report. Our report is due to Congress, the Commission's report is due to Congress September 27th, so what we've put together is a current kind of operational step-by-step timeline for pulling that report together. So at the beginning of the arrow here up on the screen, July 11th and 12th, this meeting is really looking at the recommendations document. Let me reiterate what Gaeir said. That document is a working draft. What we've really tried to do is pull together all of the narrative and the recommendations as best we could from all of the task forces, legal, best practices, market, and technology. A few of you have pointed out that we missed a couple of things. I'm not surprised.

And I apologize for that. There was no intentional omission of anything. It was really our intent to try to be as comprehensive as possible. And as you probably will note, their probably recommendations in there that are at opposing ends of the spectrum, and there are some recommendations in there that probably everybody agrees to. There were 25 in

total, and we created some categories for those, and they were just kind of a somewhat way of grouping them in a way that made sense to us, and if that doesn't make sense to you, please let us know and we'll rearrange them any way that you would like.

So the purpose, ideally, from the next two days is that if we can pull together clarity on some of those recommendations and eliminate some of the ambiguity, then we can begin pulling together a full working draft. Let me just share with you what we've got in terms of documents.

We have a working background section already drafted which is about 20-25 pages. And it's really meant to orient individuals who are unfamiliar with this terrain or the challenges associated with it for all stakeholders. It's really an orientation section specifically for congressional readers to give them some sort of anchor place, and a foundation from which to understand the recommendations.

And then we have a collection of legal documents looking at 504, ADA, a separate document on Chafee. We have documents related to the Higher Education Opportunity Act, and we're pulling together with the help of Glinda and the folks at OSEP a kind of summary document relating to IDEA 2004. Just all of the legal background information so that needs to be knit into the background section.

And then from there we actually will be moving into the deliberations of the Commission itself, and whatever recommendations emerge from this next few days, and where we are and what we can clarify. So our goal is that by the 25th or the 26th of July to really have a complete first draft, and that that really is to be considered a first draft, and open to whatever changes are necessary to make that representative of everybody here. Our ultimate goal is to have a document by kind of early September that everybody feels very comfortable with, having their name attached to, and we can move forward. So we'll be circulating the first draft everybody on July 26th, and asking for a turn-around time of roughly a month between July 26 and August 28th, precisely the time when you all want

to be on vacation and not think being any of this.
We're going to be hounding you to read the document and contribute your thoughts to it, or concerns.

We'll be incorporating that -- I'm sorry, it's July 26th to August 8th. It's even shorter. I mistook my dates here. Incorporate into Draft 2 from August 8th to the 12th, we have a Commission teleconference scheduled for August 12th, 11:00 to 5:00, and that's, again, to really work through some of these edits and begin buffing the document.

Our goal is that in that August 12th to September 8th period we really pull together a final working draft, and there's going to be a meeting outside of Washington September 8th and 9th, and we'll determine who specifically will be at that, but that's really going to be, again, another kind of buffing the report meeting.

And then our goal is by that -- by the end of the first week in September to have the report in pretty much a final ready-to-go position. And the reason for that is we also want to create -- make sure that we create multiple format versions of the report moving forward. So we want to have Braille, we want to have audio, DAISY book well structured PDF, Word document, as many formats as we can pull together.

So that's our current working timeline. And obviously some of these dates are going to be subject to a little squeeze here and there, but overall we're going to try and adhere to this so that we can meet the deadline of having the report ready for Congress by September 27th.

Any questions? Jim?

>> JIM FRUCHTERMAN: How exactly did these decisions get made, Skip? Because I am very surprised by quite a number of decisions have been made about the process, and I have asked our Chair and Vice Chair, and they say we weren't closely involved in it so is CAST making a lot of decisions about the process? And I note this is not what the Commission agreed to the last time that we talked about process. So I am getting very kind of uncomfortable with the direction that this is

going, just to be honest. I am quite disappointed with the document that was sent. I am disappointed with the decision to not send the tech task force report out. I don't know who made that decision, but we're now hearing that we're done with that and we're not even finished with that that segment.

So I am trying to figure out did -- and I kind of address this to the Chair and the Vice Chair, is the Commission running the Commission or is someone else running the Commission? Because I have this question.

>> DAVID BERTHIAUME: Thanks, Jim. I will handle that. No, I am running the Commission, and trying to work with Jim and Gaeir in terms of guiding a process, and not obviously making recommendations. We had a very significant phone call I think a couple of weeks ago. Maria happened to be on that as well because there were other issues, and we worked hard and we've been grappling with this whole issue of process, and I am sorry you were out of the country or obviously we would have had you --

>> JIM FRUCHTERMAN: Because someone decided to reschedule the meeting. It wasn't my intent to be out of the country during the meeting.

>> DAVID BERTHIAUME: No, I know, but timelines slip and we have to move on and accept that the meeting has been rescheduled.

Our process is one that Jim and Gaeir were on in a phone call, and we discussed, and it's really working off of what I thought was a terrific document as a model, which is Maria's model of putting together the recommendations from the legal task force with a really substantive discussion of each issue, and then the recommendation framed at the top. So that was what we were trying to work off and synthesize as best as we could as kind after group effort led by CAST, but with input from others

If you feel there have been items that have slipped and haven't come out of technology, then this is a great day to -- and this is the time to talk about that. If they are captured,

or to the extent that they are captured within the existing recommendations, let's build off of that. If we've missed something, let's add that in, and we can discuss that. So does that go a little ways to answering your question?

>> JIM FRUCHTERMAN: No, not really, but I will let other people comment. I thought that we as a Commission agreed on a process, and now it seems like CAST is writing the report, and I'm very disappointed with what I see in there and the way that it's framed. So it's just, I don't know, I felt that we as a Commission talked about the Commission writing report, but now CAST is writing the report. I thought that we're making editorial decisions, but the Commissioners Are not making editorial decisions. The DFO and CAST is making the editorial decisions this is not what I signed up for, guys. I kind p to be part of a Commission to make recommendations to Congress, and not to rubber stamp essentially people that aren't on the Commission deciding what's on there.

So we're going to come back to this, but as a Commission I thought that we made an agreement on what our process would be. I read the transcript from the last conference call. I didn't see us making decision as Commission to change the process, and now it's presented as something that's complete. Anyway, -- and I have talked to other people who are not happy with what came out of the process who are also on the Commission. So I don't think I am speaking alone. I may be more aggravated about it. But the outcome of this process is not going in the direction that I thought that the consensus of the Commission was heading. So anyway, I will stop talking for a minute.

>> CHAIRWOMAN DIETRICH: I think I'm just a little bit confused and partly because it's that I am not feeling that well. Is it the process the document, or both, Jim?

>> JIM FRUCHTERMAN: Both.

>> CHAIRWOMAN DIETRICH: Both. And I think that neither of those is completely set in stone, and we can make adjustments to those if we need to.

>> VICE CHAIRMAN WENDORF: Jim, I am hearing three things.

One, that the technology task force document was not brought forward in a way that you expected it to be brought forward and shared, number one. And that will be remedied, you know all can see. Number two is the process itself. And I think it's worth perhaps spending some time about what you thought the process was going to be. Yes, it was going to involve -- my understanding was that we had a small writing group setup of the task force chairs and chairs and so forth, and anyone else who might be so inclined to join.

So I think, Skip, we should talk about whether that assumption or that decision still has relevance, or if we're at a place where it's not really relevant anymore. What we have written in here is circulating the draft and Commission members commenting on it, which is a little different from what we had first thought. So I think that we should have some discussion of that

And the third, as Gaeir said, the third issue you bring up is the document itself. And, yes, a decision was made that this draft document in terms of getting the recommendations pulled together from the four task forces, you know, would be best -- the document would be strongest if it used the format that Maria had used for the legal. So the question is: Does that format not work for you? Or are you just not happy with the substance, the editorial content?

>> JIM FRUCHTERMAN: We were given an outline by CAST of how to write a task force report.

>> VICE CHAIRMAN WENDORF: Right.

>> JIM FRUCHTERMAN: We followed the outline. It hasn't come out. And the document that was circulated doesn't represent, I think, the work that we wrote, right? We had strong tech task force recommendations that now are folded under -- I mean, Maria knows. We didn't want voluntary stuff this is in exchange for not adopting a single file format, this is what must happen. Now it's buried in like a secondary or tertiary place. No one has actually seen or has had submitted the tech task force draft. People don't even know what I am talking

about. And that is a process failure, and one of the things that's happen on this Commission is we keep changing our process. We keep changing our schedule. And it makes it very difficult for to us actually execute on our responsibilities. And I was hoping that we would come here and actually stick to the rest of the schedule and the plan, but, you know, going gone for a couple of weeks now, it's different.

>> LINDA TESSLER: I want to support some of the things that Jim is saying in that I think that one of the most basic essential things that has to be clearly spelled out in laymen's terms is what are the rudimentary components that are necessary for -- I am representing people with learning disabilities -- people with learning disabilities to be able to access information? Than is not clearly spelled out. It's buried, as Jim said.

Accessibility, if something is accessible, in simple laymen's terms, and certainly Congress needs this, and they don't understand our experience it needs to say that -- I have to be able to see the printed word and hear it read to me at the same time and in a way that I can highlight fits only text, take notes. I can process the information. Or it's useless. And it's simple laymen's terms to make these suggestions I think are the most basic thing to judge the success of this Commission. And, of course, not just for people with learning disabilities, but for the blind and whatever.

I just support this concept and what's coming out in the print and how important it is. It's everything, I think.

>> VICE CHAIRMAN WENDORF: Linda, Dave and Maria want to say something, but I think, number one, if we have a document from the tech task force, I think that it needs to be circulated, and can that be done immediately? Skip?

>> DAVID BERTHIAUME: Yeah, I would think so.

>> JIM FRUCHTERMAN: I am sure we can wrap it up in the next day. But we can talk about it. I am trying to understand. I thought as a task force Chair I had a document ready for circulation. And somebody obviously somebody decided that it

wasn't ready for circulation. But if there is an issue, we should do another round on this but we need to complete this.

>> MARIA PALLANTE: I want to confirm that the last meeting I attended was Jacksonville, and we did have a discussion of the fact that there is a tension between the fact that DoE -- sorry, department of Ed not the Department of Energy is tasked with getting a report out on time. And we appreciate that in order to do that they've engaged the services of CAST which has been phenomenal to date. But we did discuss that the Commission itself has to be very intimately involved in the writing of the report, and this Commission may be unusual in that there are actually members of the Commission who want to be involved in that. And that's not often the experience with these reports. So I just want to confirm that that is also my understanding.

However, with the legal task force, I think what might have happened is that the legal recommendations have been discussed more than the recommendations of the other task force, and because of that more people were familiar with them, and that's why at this point they are written in such a way that they really just represent everybody's point of view in as fair a balanced a manner as possible because the legal task force's recommendation to this group was let's try to get consensus wherever possible, but there are so many important points being raised in the discussion that on balance it's probably better to represent those points of view so that the context is there when Congress goes to look at them, than not.

I don't think that we have any understanding of whether that particular model will work for the other task forces, but our Chairs Thought so, and I think that's what we're going to discuss today.

I would just say that at some point all of the task forces have to hand over the work to the full Commission. And what I am hearing, and I think this has been said, that some of the task force members feel a step has been missed. Are you not opposed to the full Commission discussing your findings and

losing control of them, because in legal we understand that's where we are now, but you feel that step has been missed. And I would say if that's the case, I would support that

>> DAVID BERTHIAUME: Jim I wanted to circle back and try to address your points especially using Jim Wendorf's outline. Maria is absolutely right. We had a discussion at the end of the Jacksonville meeting, and we tried to honor that, and our hope and our goal was we'll have some sort of a draft here, a first draft of the report, with the components from the different task forces. But, unfortunately, we weren't able to do that and have that type of document ready to go to circulate. So we went to Plan "B."

And if I haven't explained this well enough, then that's on me. The Plan "B" was let's try to get the most out of this meeting. Let's go through the heart of what we've been working on which is all of these synthesized recommendations. So we built on Maria's model just to try to get that out. And as soon as -- and, Skip, please jump in -- in order to create a report, we're obviously basing that and using all the documents that have been generated from the different task forces. They are at different levels as we talked about in Jacksonville with different time and different commitments by the task force chairs, but that is our intent to do that, and that becomes the heart of the final report.

Skip?

>> SKIP STAHL: I just wanted to say that CAST's role in no way is proactive. It was not meant to be that, that I really consider our work we're functioning as mediums for this Commission and trying to get the messages clear. And sometimes they come through garbled and I apologize for that. Our intent in pulling together the recommendations document was to really synthesize all the discussions and kind of final statements and recommendations from each of the task forces and pull them into a single document. And if we haven't done that well, then for that I certainly apologize because that was not our intent. And our intent was to make certain that we got each of the

salient points into a single document.

What we did do were there were a number of points of redundancy. We didn't -- rather than listing each point six times, we really tried to identify, well, this is something that came up in each of the four task forces. Let's leave it as a single statement and recommendation rather than re-stating the same thing in different language. And that was the only real editorial oversight that we applied. But if you would like your task force document distributed, I will check with you afterwards and make sure that I've got the version you want to have distributed to the Commission. I would be happy to do that.

>> CHAIRWOMAN DIETRICH: So I think the basic issue here is that we just don't have the sort of together time that we need to really do a comprehensive job on this. And I don't know at this point, I know that we can't do another in-person meeting, but we can do more phone meetings.

>> DAVID BERTHIAUME: Absolutely.

>> CHAIRWOMAN DIETRICH: Ant fact of the matter is that, at least in my recollection, neither best practices nor tech nor market every really got to present their final report. Only legal had the chance to do that. And that just became so all-consuming that no one else really did

So I think that I am going to encourage the Commission to look at these recommendations only as talking points. I don't want to get into wordsmithing this document because this is not a final document by any means. I think that we need to look at these as recommendations. I think that we need to be clear that whatever an individual task force says, that the full Commission really needs to discuss everyone of the issues. And I agree, Jim, that you wrote a very strong document with some very well, cogent points, very well thought out from tech. And tech did a really good job on that, and that does need to be reviewed at some point. But we do need to move on. I'm sorry. We do need to move on.

We have scheduled speakers who are in the room. They're not

in the room? Oh, well, okay, then let me give this to my co-chair.

>> VICE CHAIRMAN WENDORF: I think since we have a bit of time, I think that it's worth making sure that everyone on the Commission has chance to participate in this discussion both about the process, the timelines, the documents, and, you know, Skip thanks for telling us about that. But I want to make sure that we're focused going forward.

>> TUCK TINSLEY: I would like to move forward with the essential information in the document. I see our core work not being there. I am surprised. It's the four tech force documents are wimpiest and not the core ones. I am trying to understand why -- I will just reinsert them as part of our discussion. I am happy with that process.

>> JAMES WENDORF: As a going forward proposition that's what you will focus on.

>> STEPHAN HAMLIN-SMITH: I would ask a little -- a little bit further than Jim, I was on the tech task force, and our report actually was -- is almost 20 pages long. We did work actually very, very hard to follow the specific outline that was provided to us. We did analyze relationship with other stakeholder groups. We worked on what the two focused recommendations were, one about activities, and one about program plans and all those types of things. I do think that it's important that substantive recommendations that the tech task force has be inserted in these recommendations, and I completely agree with Jim that the choices that were made about which ones to include were not choices that I would have made if I were prioritize. But I also think that there is a great deal of important information and important thought that we also need to find a way to present to the Commission understanding that it needs to be done in a time sensitive way.

But the Commission deserves to hear that because, you know, Bruce also was on that task force with us, and we did a lot of hard talking. I mean, we just like the legal task force, we also had areas where we really had to work through difficult

points, and we did successfully. And so I would like to find a way to massage the agenda enough so that we could not only insert the recommendations but also have some time for conversation and presentation by Jim Fruchterman just to give substantive background.

>> JAMES WENDORF: Are you talking about the recommendation for this meeting today and tomorrow?

>> STEPHAN HAMLIN-SMITH: If that's feasible. The timeliness would be helpful to the Commission.

>> JAMES WENDORF: Maria and Glinda. There is a discussion on the floor we want to consider. But let's hear from couple of other people.

>> MARIA: I think that before other task force recommendations can be folded into the large document, that what I am hearing is, and what I would propose is that we have to have them presented. Because what -- it's not as though the legal task force recommendations rain certificated in the manner that they came out of the task force into this document. They are inserted following a full Commission meeting, albeit by telephone, where they were negotiated, and discussed and further compromised, et cetera. So that step has to be represented. So rather than take them from the task force and drop them into the big document, I would say that they have to be presented and we have to discuss them here. Then they can go into the document.

>> JAMES WENDORF: So you are agreeing with Stephan?

>> STEPHAN HAMLIN-SMITH: She has a better idea than I have.

>> JAMES WENDORF: In terms of finding a way to discuss those recommendations to bring them in before they are done. Glinda and then Tuck.

>> GLINDA HILL: George wanted to go after me. And I imagine they'll say what I wanted to say. I participated in Tuck's group and George's and we had a shortened period of time to work. We didn't have the advantage of starting first as these two groups had and I feel as if those two groups were short changed. We didn't have the up-front time that these two task

forces had, and certainly they did not have the time to present and discuss to the group. So I want to say that I would like to see those two groups have just the same kind of advantages as the first two task forces did. And George and I --

>> JAMES WENDORF: We had a staggered start. Pleat go to Tuck whose hand was first up, and we do have our speakers on the phone, so, you know, we want to make sure that before we go to them that we understand what we are going to try to do in order to address the concerns raised. Okay? So, Tuck and then George.

>> TUCK: I am going to have a shot of water first. Thanks.
(Laughter)

As far as task force one on best practices, we ended up with 11 statements as far as recommendations. We had a definition of instructional materials, and we had three demonstration projects included in our report. And as far as I am concerned, I've gone through this report and our 11 statements and the three demonstration projects and the instructional materials definition are incorporated. So I believe with this document you do have our report, and I don't see any need to distribute it further.

>> JAMES WENDORF: Good. Thank you, Tuck.
George?

>> GEORGE KERSCHER: I want to make sure that as we drive toward how we are going to represent the views of this commission, I feel strongly about some recommendations, and my strong opinion is not represented in the document. So there may be many people that feel strongly on one direction, one recommendation. We would like to make. And a few people feel differently. I would like to see the overall representation of the group's feelings correctly characterized in the document.

>> JAMES WENDORF: Thank you, George. So I think that this goes back to our discussion that we had at the last conference call meeting about how we would handle -- how we would try to push for, where possible, consensus, the same time I've heard again and again that individual Commissioners Have said we want

to be bold in making recommendations. So balancing consensus with boldness. And also I've heard today, but at other times, that there is a desire that the document properly represents differences of opinion so that the document does not attempt to do an end-run, if you will, around other people's, other Commissioner's points of view. And, George, you said boldness, if it involves a large number of Commissioners, It needs to accommodate -- needs to be there.

And also we need to accommodate difference of opinion. Have I captured that fairly well?

>> GEORGE KERSCHER: Yes.

>> JAMES WENDORF: I will turn it over to our Chair, and we'll go to our presentation. What we would do with Dave is to look at the schedule, and we will come back with some ideas about how we can modify it to address the concerns that were raised especially, I guess we don't have to worry about best practices, but we have tech and market model, to address both of those task forces to find a way to give you time for discussion and to present the key recommendations that you are focused on.

Okay? Good. Thanks.

>> CHAIRWOMAN DIETRICH: So on the phone as presenters we should have some individuals from Westat, who put together the report on the students with disabilities at degree-granting postsecondary institutions. That report was sent out by Skip and is also on our drop box, I believe. So who do we have on the phone? Do we have Laurie, Kimberly, Deborah, and Jared on the phone with us?

>> JARED COOPERSMITH: Yes.

>> CHAIRWOMAN DIETRICH: We'll let you introduce yourself.

>> JARED COOPERSMITH: I am the project officer for the postsecondary education quick information system at the national center for education statistics which is the main statistical data collection agency for the Department of Education. I am going to get the folks from Westat go through the presentation. I will say a few quick words before we get

started. This survey was requested by the education department's Office of Special Education and rehabilitative services, and it's an update to a similar survey that NCES collected in 1988. So I would like to thank the folks from OSERS for helping us to understand the importance of this topic. I also wanted to commend Westat quickly for the extra effort they put into for data collection and also for data reporting as they'll talk about shortly there was a lot of extra effort needed based on certain elements of this topic. So I just wanted to give them some due for their extra work. And I will hand it over to them.

>> LAURIE LEWIS: Good morning. I am Laurie Lewis. I am the project director for the postsecondary education quick information system. This is a survey system that Westat currently is running for the national center for education statistics that has a pre-selected panel of postsecondary institution, two-year, four-year, title 4 eligible degree-granting institutions, basically what you think of typically as your higher education institutions. At the time that we conducted this study in the 2009/10 academic year, the panel consisted of 1,558 two- and four-year postsecondary institutions. We have a coordinator at each institution, and the surveys are sent to each coordinator, and they are asked to locate the person within their institution to whom the survey can be directed.

In this case, the letter asked them to identify the person within their institution who was most knowledgeable about services to students with disabilities.

For the current study, a disability was defined as a physical or mental condition that causes functional limitations that substantially limits one or more major life activities, including mobility, communication, seeing, hearing, and speaking, and learning. And the way that we actually came to that definition was through some directives from the Office of Management and Budget who had worked with an intergovernmental task force on disability categorization, and they actually came

to it from a person-level perspective rather than an institution-level perspective even though we were collecting information from institutions which as we get into the disability things we will touch on that a little bit.

The other thing that I want to note is because we were collecting information from postsecondary institutions, information in the report represents only those students who had identified themselves in some way to the institution as having a disability. Since these are the only students about whom institutions can report. So the numbers, for instance, would differ a bit from some of the other information that NCES would put out that was student-level data collection, such as information that provided on the national postsecondary student financial aid survey.

The unweighted survey response rate was 91%, and the weighted response rate was 89%. The way we are able to obtain such high response rates is by keeping the survey short. The parameters for the survey are that they are three pages of items, and that the response burden should be 30-45 minutes per institution. And by that and by vigorous telephone follow-up efforts we are able to get response rates around 90% for every survey data collection.

I want to turn this over right now to Kimberly Raue who was the survey manager, and she will share with you some findings from the survey.

>> KIMBERLY RAUE: As Laurie mentioned, the survey findings are for two-year and four-year title 4 degree-granting institutions. The findings that I will talk about right now relate to the 12-month, 2008/2009 academic year. So the first thing of note is that 88% of these institutions reported enrolling students with disabilities. And almost all public two-year and four-year institutions reported enrolling students with disabilities. That was 99% of those institutions.

Approximately 7,000 students were reported for the 2008/2009 academic year, and about half of those students were in public two-year institutions. We looked at specific disabilities in a

couple of different ways, and one of the things that we did was we looked at institutions that reported having at least one student in a specific disability category. And --

>> CHAIRWOMAN DIETRICH: Hello on the phone, are you gone?

>> KIMBERLY RAUE: You cannot hear me?

>> CHAIRWOMAN DIETRICH: You are back.

>> KIMBERLY RAUE: Okay. I am not sure where I dropped out. I will back up a little bit. With respect to specific disability categories, we looked at those data in a couple of different ways. One of the ways that we looked at those was institutions reporting at least one student in a specific disability category. So, for example, 86% of the institutions we're talking about had at least one student with specific learning disabilities. 79% had at least one student with attention deficit disorder, or attention deficit hyperactivity disorder. 76% with mobility limitations or orthopedic impairments. 76% with mental illness, psychological or psychiatric conditions. 73% that had health impairment conditions. 73% that had at least one student with difficulty hearing.

67% with at least one student who had difficulty seeing.

Regarding the types of student disabilities reported by institutions, about 1/3rd of the disabilities reported by institutions were specific learning disabilities. 18% were for ADD and ADHD. 15% were mental illness psychological or psychiatric conditions, and another 11% were students who had a health impairment or condition.

And then the last thing that we will touch on are some accommodations that institutions reported having provided to students in the 2008/2009 academic year. 71% provided alternative exam formats such as large print Braille and audio formats of the 70% provided adaptive equipment and technologies such as assistive listening devices and talking computers. 66% provided audio textbooks and digitally-recorded texts. 51% provided large-print or Braille materials. 25% reported providing realtime captioning. And so Laurie, we're going to

kick it back to Laurie who will talk a little bit about the previous report and the findings that we had from the 1999 data.

>> LAURIE LEWIS: NCES had previously reported results from a similar survey that was conducted in 1998, and I just want to note that while some of the survey items across the two surveys were comparable, the specific disability categories that we had are not comparable. They were a bit different between the two surveys.

In the earlier survey, 72% of the two-year and four-year postsecondary institutions reported enrolling students with disabilities, and as in the current survey, almost all public two-year and four-year institutions reported enrolling such students.

Institutions reported enrolling an estimated 428,280 students with disabilities in the '96/'97, or '97/'98 school year, again, the data collection was slightly different, with approximately half of those students reported enrolled in public two-year institutions. So while the numbers were the same, their distribution in terms of being heavily enrolled at public two-year institutions was the same across the two.

In the earlier survey, respondents were instructed to include attention deficit disorder in the category for specific learning disabilities, and that combined category was the most frequently-reported disability with almost half of the students with disabilities reported in that combined category.

Among the institutions that enrolled students with disabilities in the earlier survey, 58% provided adaptive equipment and technology. 55% provided textbooks on tape. 88% provided alternative exam formats or additional time. I would like to introduce now Debbie Alexander -- oh, I'm sorry. First we will take it back to Kim who is going to talk a little bit about some of the data collection challenges that came up during this survey development.

>> KIMBERLY RAUE: Debbie and I are going to briefly talk about some of the challenges with the reporting and the data

collection, and one of the primary ones was unduplicated versus duplicated counts. We had attempted to in earlier versions of the survey asked for unduplicated counts. But a large proportion of respondents indicated that they were unable to report data in that way, particularly with respect to the specific disability category. So while 94% ultimately provided unduplicated counts of the total number of students, only about 2/3rds of those institutions provided unduplicated counts by the specific disability category. There are a number of reasons for this, primarily record-keeping. Some institutions just don't record a primary disability, so it's difficult for them to then report on what would be a primary disability. We had some institutions who report by semester. So the counts were duplicated by semester if the student was enrolled, for example, in the spring and the fall. And then we also had some respondents indicate that there was philosophical issue that reporting unduplicated counts would underreport the number of disabilities students have, so students with multiple disabilities should be reported multiple times so you get an adequate sense of the number and types of disabilities out there at the institutions. Another big issue was the comparability of the disability categories. Because there are no federal reporting requirements for postsecondary institutions, there really is no consistency with respect to how they keep their data. Sometimes institutions, public institutions, within a state will track their data similarly. But the differences across states and still across institutions is pretty dramatic. We had some institutions that have as few as four categories, and others had more than a dozen. And in our survey we were asking for 10 named categories, and then an other category. So we had 11 total. Disability terminology was also not consistent across institutions. Just as one example, the category on cognitive difficulties, intellectual disabilities, and mental retardation, those terms were meant to be synonymous, but respondents often define cognitive difficulties and intellectual difficulties more broadly, for

example, including students with learning disabilities. So now we're going to kick it over to Debbie Alexander who will wrap up this section on data collection challenges.

>> CHAIRWOMAN DIETRICH: And you have five minutes.

>> DEBORAH ALEXANDER: One of the categories in addition to the 10 named disability categories that were provided in the survey for respondents to list students' disabilities --

>> CHAIRWOMAN DIETRICH: Could you speak up on the phone, please? We're having a hard time hearing you here?

>> DEBORAH ALEXANDER: In addition to the 10 named disability categories that were provided to institutions, we included an other specified category for our respondents to specify disabilities that were not part of the 10 categories. What we found is that respondents reported a wide range of responses under the other specified. Quite a few number of them reported the disabilities that should have been reported in the 10 categories that were listed. But because of the way that their records were kept, they had a difficult time disaggregating that information. A number of institutions reported temporary disability, for example, broken limb under the other specified. Another thing that they reported were things like substance abuse.

Respondents included students who did not have disabilities as defined by the U.S. Department of Education. To some extent it could have been attributed to the fact that the type of respondents we had surveyed. The survey was asked to respond to the survey, many were from offices that handed out accommodations and special services, and we intended for a number of students and not just students with disabilities. Often they had no way of distinguishing those students with disabilities from those whom they provided -- for whom they provided accommodation. Another challenge that we faced was in the way that record systems were kept. And Kim talked a little bit about that earlier. We discovered that there was a wide variation in the way institutions kept their records on the students with disabilities.

For example, some had very sophisticated system. So they were able to provide them based on the categories that we specified in the surveys. Others relied on the paper records, and still others we found a lot were in the process of transitioning into more robust systems. Another challenge we faced had to do with institutions and reporting their counts had to do with the accommodations that students received. We found that for some their accommodation of that students received was more important than the type of disability, hence, their records were kept based on accommodations and services instead of disability.

And the last thing we want to talk about are the type of students that they reported. We found that a lot of respondents were sometimes unsure of whether to include graduate students -- of the type of student, for example, should they include graduate students? Should they include students enrolled in non-credit courses?

>> Are there any questions on the finding or the methodology or challenges?

>> CHAIRWOMAN DIETRICH: Commission members, any questions?

(No response)

I don't think that we have any questions. Thank you all so much for taking the time to present to us. We do have the report, I believe, I e-mailed it to Skip and Dave and I believe we're getting into that DropBox for the Commission members. So thank you, again.

>> SKIP STAHL: It's distributed by the listserv.

>> CHAIRWOMAN DIETRICH: Again, thank you all. It was very interesting. There was a lot of good information in there that we can use. Thank you.

>> Thank you!

(Applause)

Okay. We are now going to take a 15-minute break, and during that time can we have Jim and George up here to meet with us, please, to look at how we can change the agenda slightly? So, okay, 15 minutes.

(Break)

>> CHAIRWOMAN DIETRICH: Commissioners? Commissioners? I have no sound. Okay. So I am going to use my big PE voice here, and, Commissioners, Please bring the meeting back to order. Public, if you are hear to listen, please, are you free to join us. If you want to continue your conversations, I am going to request that you go out into the hallway to do so, please.

Okay. So we're bringing the Commission back to order. The public is certainly welcome to stay and listen, but if you have private conversations going on, I am going to ask you to step out into the hallway, please. Commissioners, I am going to ask you to take your seats. So the next hour and a half we will have two presentations, one by Jim Fruchterman for the technology task force, and one by George Kerscher for the market model task force. I am going to give you a few preliminary remarks to Jim's report to kind of make sure that everybody is clear about the overview of what's actually going on in the colleges today, not where we hope to be, but where we are right now. So if a student comes in, and they are qualified, their paperwork is on file with the disability services office, then they bring their book in, and what the alternate media specialist will be doing as a first choice is to see if this book is already created.

Does Learning Ally, former RFB&D have it, does Bookshare have it, and then does the Access Text Network have it? And you need to understand the Access Text Network, who they are and the context who they are. The reason this whole providing E-text for hard-copy books move forward is two of the largest states in terms of student population, California and New York, both passed laws saying if the student has purchased the book, or someone has purchased the book for the student, so the student has right of ownership, if the student owns the book they are legally entitled to have an electronic copy of that book from the publishers. Access Text Network was setup by some of the members of the American Association of Publishers

who help their members to provide those files because what was ending up happening is that they were inundated with thousands of requests for books that they were not prepared to handle. So Access Text was created to fill that gap and has done a very nice job of doing so for those largest dozen publishers who are part of Access Text's network. That doesn't help us any with those hundreds of other publishers who we still have to get books from, from members of Peter's group, from American University presses, and a lot of those folks. We still have to go to the publishers directly. If we can't get anything from the publisher or we can't get it in a timely way, what the campus has to do is chop the spine off the book and scan it. And then they have to run optical character recognition on it, and then edit it if they have time. But what you need to understand is what the students are actually getting in their hands that they are using, unless we've been able to get it from RFB&D who is now Learning Ally, you may have to kick me under the table, Andrew.

(Laughter)

The artist formerly known as, yes.

(Laughter)

Now, RFB&D Learning Ally does in their books provide description of the graphics. Bookshare at this point in time does not. That's something that they are looking at doing later. They are not there. But it's also something campuses do not do. So what the student has is access to the text only, and often it's unedited which means that whatever optical character recognition errors that are in the text will be there. And that's just the way it is at this point in time. Colleges also do not do the entire book unless the student needs the entire book. We only do what the student needs because we are in the business of accommodating the students and not in creating alternate formats. Most campuses do not do tactile graphics. Most campuses do not alternate text on descriptions.

There are a very few who do. The other thing is captioning. Many campuses are now captioning. I only know ones at the at the point of doing audio description. So videos are just not really very accessible for individuals who are blind at this point at all. So that's kind of the state where we currently are. And digital materials, if we get somebody who brings us a digital book not accessible, there is absolutely nothing we can do about that. There is nothing we can do. Some of the campuses have actually been reduced to taking screen shots of what's visible on the screen and running that through optical character recognition so that they can give the student something. But when you've got software programs where there are smart programs and the student can go in and they'll answer the question and then it forks, which means if you get the question right it gives you a certain set of questions, but if you get it wrong it will do remediation on that, that kind of program, if that's not already accessible out of the box for the student, then what happens is all we can do is see if we can get a copy of everyone of those questions and put that into a digital format which is nowhere nearly as effective as what their non-disabled peers are getting.

So this is the problem that we're here to solve. So given that framework, I will ask Jim to present the tech task force report. Jim?

>> JIM FRUCHTERMAN: Thank you very much, Gaeir. We've sent out the document to the members. I think it will be more widely circulated. This is a result of a task force process where we did a lot of work on our two core central issues. And so these are the issues I will focus on and I think need to be strongly present in our recommendations. We were responding to the legislation and we were assigned two issues. One is what should we do about format, format of the content. The second is should we have a centralized repository or file-sharing network, how we get the content to the people. As part of that, we're looking at how we can solve the problem for students with disabilities, DSS officers, address the need for

publishers to sell more accessible content and the like. We made essentially major consensus decisions. We decided to not replicate the NIMAS standard that exists in K-12 and higher ed. We didn't think it was the right solution for that problem. We substituted that with another requirement. We said, look, to maintain flexibility, to maintain a market model interacting with some of the other groups, we're going to try a NIMAS-style, mandated format solution for a functional solution. Not an optional solution, not a maybe we'll do it solution, but it's like if we're not going to have a national file format standard for higher ed, the formats that are sold to students are going to have to meet these functional requirements. And I think that that's something that we need to see in a final set of recommendations. How we carry it out legislatively is a legal issue.

But if it doesn't get there then we haven't done our job is the opinion of the task force in general.

We looked at existing standards. Rather than creating a new standard and creating more work for everyone to match up with existing standards, we looked at other standards asking if they met disability requirement. We looked to the work that George has done in EPUB and DAISY and the fact that the main E-book publishing standard will be highly accessible and be the same as the DAISY accessible book standard is a major breakthrough. EPUB can meet these functional standards that we laid out in our report. It's stuff that the Commission has heard before. We've gone through this list of what it needs to be to be accessible. I can come back to that in a little bit. But I think we need to see those as requirements and not optional. That's part of the deal, to give the publishers the flexibility.

Great, you want to do accessible PDF, as long as the student can do all of these things and access information, great. We won't mandate a format. We talked to and addressed some of the issues of Stephan and DSS offices, that often when the publisher supply as file it's not ready for the student. The

DSS office has to do a lot of work on that to fix it. That's how we get to the functional requirements. If they met the functional requirement, the job of the DSS office would be easier rather than having to as so many of us do take digital books as if they were print books and scan them and OCR them. This is something that we do, the DSS offices do, and if we had books that met the functional requirements we wouldn't have to do. I think that actually is the core of the file format recommendation.

And we saw it as sort of a negotiated trade-off. More flexibility, market model, in exchange for meeting the requirements and having DRM not get in the way of the student accessing the content.

The second issue the tech task force was charged with dealing with is what do we do with file-sharing network, a centralized repository, sort of the issue of how do people find and get the content? And, again, we made a decision to not replicate the K-12 solution of the NIMAC. The NIMAC actually has the majority of textbooks now published in K-12 going forward. And we are a big user of them at Bookshare. We understand it's a good solution. We don't think it's a good solution for postsecondary because of issues that we've talked about. We as a task force agreed there will be multiple solutions, and those multiple solutions not only include exempt organizations, copyright exempt organizations like Bookshare and RFB&D and NLS, but the disabled student services office having to meet the requirements for the civil rights of students by giving them accessible materials, and also the ability to purchase accessible content.

It was with that vision of a multiple set of solutions that we came to our recommendation to not replicate the NIMAC, but instead explicitly support a Federated search solution so that people could find different kinds of options depending on their needs and their preferences. You know, if you need hard-copy Braille with tactile graphics, you should be able to find out has anyone done that so that you don't have to replicate that

as a college or university. We also want to reduce duplicative work. That's another outcome of Federated search. The biggest challenge that we hear from schools and for students with disabilities is I just want to get my accessible book so I can get on with doing my course work. People really want the shortest distance between what they need for school and, you know, accessible content them don't want to have to go 10 places to find this out.

So that's why we came up with a Federated search approach. We're excited with the fact that the publishing industry and DAISY are working together on what that metadata should have so that people can find that. We think that's another essential requirement of deciding not to have a centralized repository is ascribe the functional aspects to be able to find the book, to be able to find out this is a Braille book with tactile graphics. When we say metadata, that's what we're talking about. I have "War and Peace." Is it in Braille? Will it talk to me if I am dyslexic? Can I enlarge it? Can I stick it on my Braille display? These are the students that are asking. It's the same question that customer of electronic books are asking will it play on my device is the same question that disabled students have as customers say will this work on my Kindle or smartphone or iPhone or iPad or whatever?

So, again, this confluence of the commercial interest of the publishers with the accessibility needs of students is really powerful, but it's the essence of the deal is that we'll meet these functional requirements so that people actually get the benefits of these changes. We also talked about the need to share content. And share content both under licensing schemes and also under the copyright exemption. Because organizations that provide blind people with tactile graphics and Braille do not want to have to go to ask for a license from the publisher to do that. Today, the status quo is that we just do it because we're serving blind people under the copyright exception. I don't want to introduce, and I don't think that the task force wanted to introduce a higher barrier to access

than exists today.

I want to come back to that as a constant theme. Functional requirements, making things better for students, incorporating a market model, and making it as easy as possible to get the accessible content that you need. I think that is actually the essence of the technology task force report. And I think that both of those core recommendations need to be top-line recommendations in our final set of recommendations.

>> CHAIRWOMAN DIETRICH: Thank you, Jim. Any questions for Jim?

(No response)

>> VICE CHAIRMAN WENDORF: Or discussion of the two recommendations?

Yes, Chester?

>> CHESTER FINN: I have been to a couple of conferences and talked with students, and they're not getting the materials, or they don't know about the materials and how to get it accessible to them. One young lady, she had to have her grandmother be her reader, and the college told her, well, you can't do that. And she told them, well if you're not providing a way for me to do that and for my materials, then she's going to, you know, read for me and help me with the books and materials that I need. So I have been attending these meetings, but I don't see how a lot of this stuff relates to some of the people, or how to get them to get the information out what they can do and what they can use. So I am just interested in how some of that can work and how we can, you know, get people connected with what's out there for them.

>> CHAIRWOMAN DIETRICH: Anyone have any response for Chester?

>> STEPHAN HAMLIN-SMITH: Chester, I do think part of the technology report, I haven't read it in detail in awhile, but I believe if I am correct that part of what we discussed at length was a recommendation about increasing training and information opportunities for people who work at colleges and

universities, particularly related to accessing how to get their hands on this information both for professionals and for students because I think the concern that you bring up is valid and echoed over and over and over, and I want to say that that's also been -- that was mentioned in the draft recommendations somewhere. I don't have it in front of me. But am I remembering correctly? We didn't lose that, right?

>> CHAIRWOMAN DIETRICH: You are remembering correctly, yes.

>> STEPHAN HAMLIN-SMITH: Because I think what are you saying happens often, that the right information doesn't get to the right people, and there is a technical assistance and professional development piece that we have built into this.

>> CHAIRWOMAN DIETRICH: Thank you. Any other comments in response to Chester?

>> J. BRUCE HILDEBRAND: Let me get to my mic.

>> MARIA PALLANTE: Well, in response to Chester and Jim, congratulations on the work of the task force. I thought it was really focused, and just speaking for a moment as somebody from the Library of Congress, I think the Federated search, which I think I first listened to you discuss in Jacksonville, is something that I have been thinking about is a very good idea.

>> CHAIRWOMAN DIETRICH: Thank you, Maria.
Bruce?

>> J. BRUCE HILDEBRAND: I just checked from Access Text's network, but with the new free Federated search that will be coming from ATN, Chester, they will allow individual students, or anybody, to go in and use the Federated search function so they would be able to find out where the file is available and most quickly accessible. This would apply to the DSS office or even individual students. So that's coming. So it's evolving right now.

>> CHAIRWOMAN DIETRICH: What Bruce is referring to is there a Federated search capability in the Access Text's network interface now which I was privileged to try the beta of last night, and I searched on "War and Peace," and you guys know

you've got it.

(Laughter)

A lot of people do. It was impressive. I found it quick, I found a lot of information. I know they worked hard on the speed of it. So that's great. We want more of that.

Linda?

>> LINDA TESSLER: I believe it's very important in the report even though the Commission is addressing colleges and post-graduate students, that there be some reference to the largest population of disabled people, which are learning disabled adults who are a silent population. Our example came out in our public hearing. There was a woman that came. She had gone through school successfully getting access to material. She obviously had gone to the office, and legally could submit and get certain books available to her as a student. When she became a teacher, the information was no longer available to her. I make this point as a psychologist. Of course, my responsibility is to stay abreast in my field. Learning through listening, there are others, just a couple, Jim's organization will still give me access. Other organizations will not. This large population will be silent, and I don't each know if Congress will ever even know that they are out there or that there is a need to address this incredibly large population of learning disabled people who are then denied access as soon as they are not enrolled in school. And I think it's imperative that there be some reference to these people that we're educating to reach their potential in life as professionals. And then they have a responsibility to stay up in their field, and then they are cut off. I just needed to make that point. Thank you.

>> CHAIRWOMAN DIETRICH: Thank you, Linda. We should remind the Commission that in the testimony that we heard in Ohio that there was actual faculty member who called in who was blind who said that she was unable to access the instructor's side of some of these materials even though the students were able to access the student side. So we do want to remember that there

is a larger context here.

Other comments, discussion? Jim?

>> JIM FRUCHTERMAN: I wanted to address Linda's issue. The context that we face is that we're supposed to make recommendations on higher ed. The faculty and staff linkage is essentially the way to do that. We are focussed primarily on students, but we also do have faculty and staff with disabilities. And right now the copyright exception is the only mechanism that we have if the commercial product is not fundamentally accessible, to solve that problem. It's one of the reasons why we don't want to get rid of the copyright exception because it does help solve part of the problem of making sure that faculty and staff have that. We at Learning Ally and all serve faculty and staff because we have a copyright exception not because there is a strong civil rights' requirement that exists for addressing the needs of students. But it's something to keep in mind going forward.

>> CHAIRWOMAN DIETRICH: Other comments? Maria?

>> MARIA PALLANTE: But just to follow up on that, we are also of the mind on the Commission that we do want the market to serve everybody and anybody that needs any kind of material, however defined, in any format that they need when they need it. So the exceptions are the other side of the coin, and we will address that a lot in the report. But if the market works, there's no delineating or definition required for who needs what or what their disability is.

>> CHAIRWOMAN DIETRICH: Others?

>> LINDA TESSLER: Maria, that's a question that's hanging out there. What does it mean that the market's working? My experience is that it can appear to be working, but unless you go to use a Kindle, unless you get your hands dirty and, so to speak, go into a Kindle and realize it's not working, to people not involved it looks like it is working. So that definition concerns me, you know, what does it mean? I don't know if you have any other pieces to that.

>> CHAIRWOMAN DIETRICH: Thank you, Linda. I think that you

make a very good point which is that in the minds of the general public, people equate digital with accessible. There is an assumption that if it's digital, if it's on a machine, it is accessible. One of the greatest barriers I think we face is actually that public perception of there is nothing for us to do because, well, you can read it on your computer, right? There is a lack of knowledge there that actually I think interferes with our mission of actually improving access.

Maria?

>> MARIA PALLANTE: I don't disagree. Not to sound like a lawyer. But I don't disagree with what you just said.

(Laughter)

What I was pointing out is not whether the market is working now, but that one of our considerations is to get the market to do what we want it to do. That's one of the charges.

>> LINDA TESSLER: Thank you.

>> MARIA PALLANTE: To be clear, one of the six specific considerations this Commission is required to take into account is the following: The feasibility of establishing market-based solutions involving collaborations among publishers of instructional materials, producers of materials in specialized formats, and institutions of higher ed. So in other words, one of our jobs is to do what we can to try to kick the market to where we want it to be. And we can do that, we don't need to worry about what disabilities are included and what aren't, and whether it's post-ed, narrowly defined, or broadly defined. That's the big goal. And then to the extent that the market doesn't go where we need it to go, we must have exceptions and limitations in the law as a safety net.

That's what Chafee does.

>> CHAIRWOMAN DIETRICH: Jim?

>> JIM FRUCHTERMAN: I want to make clear. We had a 20-page task force report. I have to confess I gave an abbreviated version of that in the interest of time.

(Laughter)

But I think, you know, when I hear some of the issues being

brought up, I will come back to things that we did put in there. For example, this difference between borne digital content and borne print content is one that this task force and the entire Commission has come back to over and over again. And, you know, part of the goal of DSS offices and authorized entities is to often convert inaccessible print works into accessible digital works so that students with disabilities can use them. We also address the issue extensively of borne digital content. That's where our functional requirements are focused. If you get digital content, it should allow you to do these functional things. When we came to things like web pages and web content and the curricula that we see, we pointed to an existing standard, Section 508, because we didn't see the need to re-invent a new standard.

I touched on that briefly, but I wanted to say that 508 was our recommendation. I did see it show up in the document under the VPAT system. But 508 does have requirements for purchasing and the like. We saw that as an essential way of solving this problem, and one that Universities Are already familiar with, and the publishing industry and content providers and the tech industry are all familiar with as well. So, again, I wanted to take advantage of existing solutions rather than add a new requirement and make it easy because people have been working with existing solutions for years, they'll have a good identify for understanding what it will take to get through it as opposed to a five-year period of what are we supposed to be doing?

>> CHAIRWOMAN DIETRICH: Thank you. That's a nice segue into George's section on market.

>> GEORGE KERSCHER: Thank you. So what I am going to talk about is the logical work that we've done as opposed to the chronological approach, you know, when things happened.

We asked that there be in the background section a little bit about digital publishing, the new borne digital products. What is the history of that? The relationship between DAISY and the EPUB 3.0 standard. And, of course, the important piece to

understand from the market model perspective is the convergence of the mainstream market and the same format used by libraries serving people with disabilities. So that's a key thing to understand in terms of the market model.

We also discussed that the responsibility is placed on the university for the accessible content. They -- we know about the Dear Colleague letter that was written, that's the advice given by DoJ, and we understand that. But the responsibility is still upon the university. And much of the discussion that the market model had was changing that requirement where it should be the content producer, the publisher, the professor, the open educational resource developer must be the one that creates that content, that borne digital. We are talking about borne digital content primarily, and the need that that must be accessible. And, of course, the controversy is around the word "must." Everybody would agree to a "should," but we're talking about a "must."

And the must relates to a law that would say that these materials must be accessible. A great deal of good discussion evolved around, well, what does that mean? How can you make all materials fully accessible and that's not reasonable.

And the thinking was that a group, and we mentioned the Access Board in this context, would be responsible to identify what are -- where is the bar drawn? Where is the bright line? Based on the technology -- technology's work on functional requirements, what are the functional minimal requirements that would need to be provided in a document that would be available and put into the marketplace? And then that document would be commercially available through all market outlets. So whatever the publisher is selling through, that would go as the input into that chain of delivery, whether it's Barnes & Noble or Amazon or Apple or Core Smart, whatever their distribution chain, it enters into that distribution chain as fundamentally accessible. That's very important.

And the Commission, this access board would identify what the

minimum barriers are. So that's been a big part of what we've been wrestling with. We also understand that print, primarily print-based materials, are not accessible, and we looked at how could we facilitate upgrading print content into the same standard and distribution into that market. And here is where we got into the notions of collective licensing and the different licensing approach, and a pilot that would help take a lot of these print content and upgrade it and get it into the digital marketplace as if it were borne digital.

Many of these things, you know, pointed to the licensing, to the statutory requirements that might be needed to be passed in order to put this kind of requirement on accessible materials, and that was, you know, the lion's share of what we were able to talk about. And much of this was embodied in the document that was submitted by the NFB at the Ohio meeting. So that in a nutshell is the market model discussions that we've been having.

>> CHAIRWOMAN DIETRICH: Thank you, George. Comments? Discussion?

Bruce?

>> J. BRUCE HILDEBRAND: I think, George, there was more of a focus particularly on the --

>> GEORGE KERSCHER: A little louder, please?

>> J. BRUCE HILDEBRAND: I think there was more on the focus of the NFB requirements that they, in fact, did not enhance the market model. And, in fact, could be highly restrictive and actually have people trying to figure out how to get their technology out instead of in because, again, we do not want to reach a point, and this was the point of the technology task force which we've all discussed, is that we go to a NIMAC because based on this kind of statutory requirements that were reflected there, is we would be in a situation where people would reach a certain level and be essentially forced to stop. They could not proceed with new technologies because it might not at some point meet whatever this criteria would be that would somehow leave them libel. And if you are going to be

libel to achieve new technologies to achieve the end what you and I want, that would slow progress.

So I agree with your point about the market model, enhance the ability to get more product in the market more quickly, it's more accessible on more platforms. I think there will be remarks today from SIIA, or tomorrow, about the successes that are being achieved. You are involved directly in numerous successes, EPUB 3 is in and of itself a success. But if the argument is made that, okay, you would be libel, then there would have been no previous EPUB standards because it would not have met the current criteria, whatever that is. So I want to challenge you little bit on saying that incorporating NFB into the market model would be an enhancer.

>> GEORGE KERSCHER: When you include accessible requirements from the beginning and design this into products, that it builds a better product for everybody. And we in no way want to stop innovation or prevent that from advancing. I got a iPhone here. And Apple's been magnificent in being an innovation leader, and they build accessibility into the phone and the products that they create have voice-over and other accessibility features. And once you have accessibility requirements, you end up building better products for everybody. So I don't see it as being creating a liability for people who are creating content. And I do think that the notion of the Access Board providing reason and a clear, reasonable specifications, is the gate valve, the control that would allow innovation and still ensure that people would be getting accessible content from the mainstream products.

>> J. BRUCE HILDEBRAND: George, how you just articulated -- we agree exactly on that. And that's why we suggested the 508 refresh and WCAC standards, because we think those will provide the framework that we can do this with. We have indicated that publishers are more than happy to work with the Access Board. That's not a problem. The only thing I am concerned about is we've discussed at great length between Mark and all of us from

NFB is that creating liability to try to create new technology is a dangerous way to go.

>> CHAIRWOMAN DIETRICH: Let's just be specific here. I believe what Bruce is referring to is the right of private action part. So that's the section that you are calling into question, Bruce? Am I correct?

>> J. BRUCE HILDEBRAND: Yes, ma'am.

>> CHAIRWOMAN DIETRICH: Not the standards?

>> J. BRUCE HILDEBRAND: No, ma'am. et

>> CHAIRWOMAN DIETRICH: Thank you. Just to clarify.

>> MARIA PALLANTE: I think it's clear that the legal-based recommendations and market-based are blending now. We're having that discussion.

>> GEORGE KERSCHER: Right.

>> MARIA PALLANTE: I want to be on record because I felt strongly about this from the beginning. We have a mandate in our charge that says that we have to look at establishing market-based solutions -- this is what I just read a minute ago -- involving collaborations. We can talk about the private right of action. It's in the legal recommendations, although that phrase got dropped and we can insert that. I think that Mark would like to insert that. But that is currently framed as if the market, which is this mandate, doesn't work, we feel so strongly about this that we would prefer Congress legislate to make the market go where it should go. But that is not the same as letting the market develop. I just want to be clear about that. Our entire market recommendation can't be that we want Congress to dictate the market.

That's not the same as a market. That's a safety net or a result of the market not working. So somewhere in our report we have to have some focus on establishing market-based solutions involving collaborations among the players.

>> GEORGE KERSCHER: Before this Commission, or at the same time that this legislation was drafted, the effort of creating the market model was initiated by the convergence of DAISY, the disability side of things, and the EPUB side of things. So we

figured this out before, you know, that's what we're doing. That's why we're doing the EPUB 3 standard and driving that forward. The commercial market needed a revised standard, and the disability community needed it. So this is all in support of that move toward a market model.

>> MARIA PALLANTE: Understood.

>> CHAIRWOMAN DIETRICH: Mark?

>> MARK RICCOBONO: We're not just talking theoretical, but students who are in postsecondary education, who have a right to access that education. We all acknowledge in this group that on the technology side, if we build the technologies from the beginning with accessibility, it will be better for everybody. That's what we're talking about. That should be the standard that we're talking about. I think when we say "the market," although the market for digital books may be new, technology is pervasive in education and has been for a long time. So I would ask the members of this Commission, do we think that the technology market in postsecondary education has evolved such that students with disabilities have the type of access that we want them to have? I don't think so. I don't think so.

You heard from Chris Toth at Florida State who has been shut out of a degree. We're not talking about books, but technology. Math technology where the University did not make any accommodations. And the same system that's used at Florida State is used at other Universities Where students are trying to get access to math classes. So I think that we have to remember that this is in the context of we have students who have rights to have access, and we're talking about technology used specifically in these settings that impacts these students' ability to access the environment in so many ways. So it's not just about where's the market going to go? We have to balance that against the civil rights that these students have.

>> CHAIRWOMAN DIETRICH: Bruce?

>> J. BRUCE HILDEBRAND: Mark, is the point on Florida State,

is it the school did not provide the accommodation for technology that exists, or the technology that does not exist? If the school did not provide the accommodation, but the technology exists, what's the point? I'm sorry, I am losing it.

>> MARK RICCOBONO: I am not sure I understood what you said.

>> J. BRUCE HILDEBRAND: You said Florida State did not provide Chris the accommodation. All right. Then that's fault of the school? But if they, in fact, could have provided the accommodation it would seem to indicate that the technology that he needed or wanted does exist. So is it technology not exist, or FSU didn't provide the accommodation?

>> MARK: I think it's both. I think that the technology does exist. But because there is no responsibility on the vendor of that technology, that technology was not provided. And I think that's what we're talking about. I think that the University representatives in this room would say they need help with that shared responsibility. That's what I think we're talking about. Where does that shared responsibility happen? Florida State could have made work-arounds, and other universities try to make work-arounds for this technology. But we know that the real opportunity for these students to have full access, the type of access that we want, effective and integrated, is to have that happen when that technology is built. And that does not stifle innovation.

There are all sorts of innovation happening now as being presented to this Commission where accessibility is involved. So maybe I shouldn't use the Florida State example, but I don't want students with disabilities to have to wait until someone decides the market has failed. I think that there are students right now who are being shut out. We have an opportunity to say in the digital content area, "We can make a difference."

>> J. BRUCE HILDEBRAND: May I, Gaeir?

>> CHAIRWOMAN DIETRICH: Jim Fruchterman is next.

>> JIM FRUCHTERMAN: We need to come back to the irony of the default setting for a new technology innovation is

inaccessible, right? Because the engineers inventing the new technology if they are not aware that it's a requirement just leave it out. We're more than 10 years into the E-book industry, and NFB is still suing people right and left to implement things that weren't news 10 years ago, right? And the irony is that the group of students who would be the most natural customers for electronic books have been consistently locked out of electronic books for the last 10 years. That's why the blind were demonstrated in front of the author's guilds because they were wanting to turn off text-to-speech. So when we come back to a market solution, we're not talking about an unregulated market.

And part of I think the trade-off and the collaboration that we've been trying to do here at this Commission is rather than coming forward with a strong, rigid, legal requirement, thou will submit all books in the NIMAS format which is what in K-12, we're coming with a more functional requirement. To do that, we have to trade this off, that no one in university should buy a new piece of AT, or invent a new way of testing students without realizing that it's a no go to leave out the disabled students. And MicroSoft doesn't release inaccessible versions of MicroSoft Office or Explorer anymore because they've been sued and threatened to be sued enough so that they tell their engineers don't do that again. That's I think what we're looking for. The balance between the civil rights for students with disabilities, an encouragement of purchasing accessible materials to generate a market so that schools and universities go, "Oh, yeah, we've got to put accessibility requirements into this so that our students, faculty, and staff aren't left out who have disabilities."

But there is a trade-off here. That's the balancing act we're trying to do encourage the market, but realize the market has consistently failed which is why we're here.

>> CHAIRWOMAN DIETRICH: Thank you, Jim.

>> GEORGE KERSCHER: Can I jump in, Maria first?

>> CHAIRWOMAN DIETRICH: Go ahead, Jim.

>> MARIA PALLANTE: That was Gaeir.

>> GEORGE KERSCHER: There are two pieces always. There is the information itself, the content, and the presentation and reading of it. And both have to be accessible in order to have this work. And it's hard for a university to be saying, "Okay, now, are these books that we're getting digital books, are they inaccessible? Is it the reading system? Is it this? Is it that?"

I think we have to push it back to the people that are producing these products and have requirements, statutes, on the content producers and the producers of the software that presents the information, the reading systems, the test-taking systems, the study materials. You know, all of these things need to be accessible. And, yes, the Universities Must be responsible to purchase these accessible materials. But I think we need some kind of clout on the software developers and on the producers of the content. Otherwise it's so easy, oh, I can just do images of these things and put them up, and it's completely inaccessible. Both things have to be working and accessible.

>> VICE CHAIRMAN WENDORF: Mark, and then Lizanne.

>> MARK RICCOBONO: I wanted to make the clarification so that everyone is on the same page because I've gotten the question that 508 applies to federal agencies, and it is not something that is currently something that applies in the realm we're talking about. Now, some universities have chosen to follow certain aspects of 508, but 508 is a stipulation that relates specifically to federal agencies and not the institutions we're talking about.

>> VICE CHAIRMAN WENDORF: Lizanne, and then Bruce.

>> LIZANNE DeSTEFANO: I would like to support what others have said before. I think that the dual approach, putting pressure on the producers, and then also pressure on the Universities To comply is I think the only way that this would be successful at a university like mine which is large and decentralized and lots of people make decisions. There isn't a

single decision-maker at the university about what we buy and what we put in courses. But, again, I think that we also need to keep that third component which is the faculty development component. There also needs to be an educational component for the people that really are the decision-makers for many of these courses, that is the faculty, about what elements they need to consider when making educational materials available for their courses.

So I think that we really need to think about three pressures.

>> VICE CHAIRMAN WENDORF: Professional development, if you will?

>> LIZANNE DeSTEFANO: Faculty development.

>> VICE CHAIRMAN WENDORF: Sorry, Bruce.

>> J. BRUCE HILDEBRAND: Not a problem. I come to the point that, okay, everybody keeps talking about the rapid change of technology. And all of these achievements of late. I have only been in this for six or seven years, and I have seen it changed so radically in those six to seven years. So now that we are reaching critical mass, now that progress has accelerated, now that the technology is becoming more effective and affordable, well, let's throw the monkey wrench into the works at this point. The pressure is on. And I think under 508 I don't think that you can say it only applies to federal, but federally-funded colleges and universities.

>> CHAIRWOMAN DIETRICH: No, it does not.

>> J. BRUCE HILDEBRAND: Yes, ma'am.

>> CHAIRWOMAN DIETRICH: No it does not. You are confusing 504 and 508. Betsey?

>> BETSEY WIEGMAN: I agree. It's just for the agencies.

>> J. BRUCE HILDEBRAND: Just for agencies?

>> BETSEY WIEGMAN: That's correct.

>> J. BRUCE HILDEBRAND: But we're trying to push it further. We're trying to bring in a standard, a format, and work with these agencies. Every publisher represented in this room in any way, and if you will talk to SIIA over there for the software industry, and small companies like MicroSoft and

others, and as was just pointed out by Jim, okay, for whatever the reasons, now their materials are accessible. I've got a iPad upstairs that I am still trying to learn how to use, thank you very much. I got it last week. And I think several people have sat me down and said, no, Bruce, not that way. Turn it right-side up and do other things. But the point is that now they are coming out. And you will hear from the people who are do be the new accessible materials.

So why at this juncture when we are making a breakthrough, or have made the breakthrough and are accelerating it, would we want to start somehow trying to change the rules to the degree that people would be hesitant to be involved or to create new things? If you look at NFB, your Blio. With the rules that you are discussing right now, you would be litigating against your own product. A I don't think that would have been helpful.

>> CHAIRWOMAN DIETRICH: I think we need to take a step back here and reiterate the fact that the Department of Justice, the Department of Education, have come out with a joint letter, and this is a rare thing, to make it very clear that the campuses are required to buy products that are not going to block out a whole segment of the student population. So we're discussing the market. The market is for and only for accessible materials. That is the market.

And if you say, "Well, we don't want to limit the market." I am actually rather suspicious that at this point what we have is the suggestion of limiting the ability of smaller players to break into this field. Frankly, I am really wondering if there is a bit of an attempt here to use this Commission to ensure market advantage. And that offends me on a lot of levels because if we do not have standards of access, and if we do not have great clarity in the market that you must meet these standards of access if you are going to sell your products to these institutions, which is very clear to the big players, you're basically locking out the little players. You're basically reducing market competition. And I don't think

that's right.

I don't think that's something that I am willing to sign up for. So I think we need to reframe this and recognize that standards are always a necessity. I have been working with computer programs since there were punchcards, and I know there are a lot of others in this room that can say the same thing. Every step of the way there have been standards. There have to be standards. It's the only way that you can create technology is with standards. Fortran had standards, he COBAL had standards, MicroSoft windows had standards. This is another clarification of the standards, and it would increase competition because it would make the playing field even for everybody.

>> STEPHAN HAMLIN-SMITH: Not to put you on the spot. Could I ask either -- my mind just went totally blank.

>> CHAIRWOMAN DIETRICH: George? Jim?

>> STEPHAN HAMLIN-SMITH: Thank you. Sorry, George.

(Laughter)

I want to go -- I know we're in the midst of the market model report. And I'm a little bit lost right at this moment. I am wondering if some combination of George and/or Maria can summarize where we are in terms of what we're talking about and where we went to? Because I don't think I am the only one, but even if I am, it's important that I understand.

>> VICE CHAIRMAN WENDORF: In fact, I was going there with you because I would like some clarification for all of us. I mean, I've doodled here. We have civil rights of individuals. And in this diagram we have market forces and solutions. And we're trying to find, as Jim pointed out, some sort of balance or respectful way to deal with both the forces as well as the civil rights. What I'm not sure of right now is where we are in terms of market incentives or market -- or requirements that are being recommended. In other words, from the task force, or the two task forces, you know, what do you see being required in order to get the market to move in a certain way? And what,

if anything, do you see as incentives to get the market to move in that way? If that helps.

>> GEORGE KERSCHER: So, first of all, I think that we are talking about functional requirements. There are different ways to do it. I mean, CoreSmart, for example, has a proprietary system, and they can have pull-down menus that are talking and, you know, work with refreshable Braille, totally proprietary. As long as it works, that's okay. We know that the publishers want to put essentially they are looking for one set of content to put into the E-book market. And I'm recommending that people use EPUB 3 for that which is -- meets those functional requirements. So from a standards versus proprietary, it doesn't much matter. As long as it works for the end-user. Okay?

I do think that -- and I don't know how to craft a statute like this, that there should be a requirement on people putting content out that it must be accessible. We heard from CoreSmart that when publishers provide an untagged PDF that it's just an enormous amount of work, enormous amount of work to make those things accessible. And I don't think that content like that targeted for higher ed should go out into the market unless it's accessible. And then the software that renders it must be accessible. And I don't know how to do that from a statute perspective. But my recommendation to Congress would be to put legal requirements on content and reading systems and software that's used.

Maria?

>> VICE CHAIRMAN WENDORF: Good, Maria?

>> MARIA PALLANTE: I think that's clear, that many people in this room think that. The higher-level issue that I just want to frame, and I think I am getting confused about is that we are charged with also creating collaborative market incentives, and the fact that many people in this room don't think that they are working now is beside the point. We are charged with framing new ones and trying to create new ones to get the market to develop in a collaborative way. The word

"collaborative" is in our charge. That's not the same as the regulated market. We keep jumping to the chase that there is a failed market and therefore we need to regulate and have a statute. Let's stipulate that we understand that's on the table and people want that in the report. Now let's go back to what are the creative incentives that we have to get the market to develop in a collaborative way because we all recognize that it is much better to have accessibility built in from the start of products, and that the past 10 years has not been great.

>> GEORGE KERSCHER: There are two pieces. One piece is with existing print products that will continue to enter into the market, and that are in the market. And the collaboration that we envision is that collective licensing, the licensing piece that allows organizations like Learning Ally, and Bookshare, and anybody who wants to get into the business of upgrading will make it easier to get those products into the market.

And another piece which we haven't talked about that much is upgrading digital content that is borne digital but -- and does meet that line of accessibility, but more can be done like adding media overlays, human narration to it, things like this, and here, too, we have licensing issues that will help to create that bigger market, that better market. So that's -- but I think that the fundamental baseline digital market has to be accessible. And those two pieces add to the market model and expand it.

>> MARIA PALLANTE: I would add that the legal task force is also recommending that Congress look at things like tax incentives to help small presses.

>> VICE CHAIRMAN WENDORF: Good point. Jim and then Bruce.

>> JIM FRUCHTERMAN: Maria, are you bringing up collaboration a lot. I see a lot of collaboration in the proposals that we've put forth, much more collaborative proposals than if we replicated the K-12 system which is a real command-and-control kind of system. So Federated search is a collaboration between the libraries for the print disabled and the publishers to make

it easier to purchase and/or borrow from a library. That's a very different solution that is coming out during the time period that we're here, right? We're trying to say, let's not tell the publishers exactly how to build the product, as George said, CoreSmart can adopt the proprietary solution and if it met the functional requirements of being available to a disability, that's great. We're going to try to get the universities to buy accessible products.

I actually think that there is a lot of collaboration built into this. Remember, we're not in this context where we're coming to this without background, right? We've got the Department of Justice and a lot of lawsuits coming on saying, "How are you going to actually do this?" And it's our job to come up with a set of recommendations, Federated search, functional requirements, purchasing requirements are all ways that are going to try to encourage a market model. I think that we're taking it seriously, and that's the context that we make these recommendations.

>> VICE CHAIRMAN WENDORF: Jim, it's possible to both move toward some regulatory requirement and also collaborative market model focus? Do you see them as both possible?

>> JIM FRUCHTERMAN: I actually see regulatory solutions that encourage the kind of collaboration that we're talking about. And that's actually what we think is there. Believe me it would make my life easier if we mandated that all publishers deliver EPUB that met all of these standards. It would make my life easier. But we're not saying that. We have a lot of flexibility. Let's make it easy for the plethora. That's the essence of the collaboration that I see. We have a university trying to buy accessible products.

>> VICE CHAIRMAN WENDORF: So, thanks. So, Maria, did you need to respond at that that in a way?

>> MARIA PALLANTE: I don't want to stand on ceremony on this, Jim, but I'm sorry, regulatory frameworks do not encourage. Regulatory frameworks regulate. They are different. We have to hit both of them. That is my only

observation here. That the market charge in the stat ought to, the collaborative word is not mine. It comes from the Commission's charge. We have to do that. We have to make sure that we adequately represent in the report collaborative incentives.

>> VICE CHAIRMAN WENDORF: Okay. Collaborative incentives and not just collaboration.

>> JIM FRUCHTERMAN: I guess it's an interpretation difference.

>> MARIA PALLANTE: Regulatory is a law. Regulations are requirements.

>> VICE CHAIRMAN WENDORF: Let's move to Bruce, and we need to further explore those two things, right? But, Bruce?

>> J. BRUCE HILDEBRAND: Let me make it clear that publishers do not --

>> VICE CHAIRMAN WENDORF: Can't hear.

>> J. BRUCE HILDEBRAND: Publishers do not oppose standards.

>> GLINDA HILL: You will have to speak up.

>> J. BRUCE HILDEBRAND: Publishers do not oppose standards. The differentiation here which Maria just highlighted is, is statute and regulations which don't achieve what we're supposed to achieve is establishing a collaborative market model so that we can continue to accelerate and have new technologies and new ideas.

Now, it is regressive to regulate. Have we all got frustrations? Sure. We've articulated these over and over again where the publishers bump into walls, where we've got problems trying to conform to 25 different platforms, where we've got thousands of different demands from different students needing different accommodations, the DSS offices are grossly underfunded, huge turnover in personnel, and all of the things that Steve articulated, the various problems that we have with what constitutes a Chafee student, and how will it be changed? What might Congress say? And our recommendation will be let's not do this piecemeal, but let's do what the intent was. Let's inform and take it to Congress and let Congress

make some decisions based on the plethora of information that will be provided by the different portions of this market. And then decisions can be made.

But back to the point. Every time we say, "I am so-and-so, and I have a problem. Let's create regulation or a statute and let's impose the government on the market when it's a brand-new market. And let's move it in the direction I, the advocate for this position, want. So let's give everybody in the room their position, and we'll pull in 10 or 15 different directions by statute or regulations, and we'll stop it."

I don't think that's a valid argument.

>> VICE CHAIRMAN WENDORF: Jim?

>> JIM FRUCHTERMAN: I would just say that we should re-read the legislation that constituted this Commission. I read in there do we setup a system just like we have in can-12, a strongly regulatory system? Why would Congress asked us that question if they presumed the answer was no? I think that we have -- we're not here to do regulations but make recommendations? But regulation and making recommendations to Congress about regulations is antithetical to do what we're supposed to do. I think it's one of the charges that we're answering, and I would like to blend both of these. But saying it has to be one way or the other? If it would have made my job a lot easier to have NIMAS-style file format solution and a NIMAC centralized repository, it would have made my job easier. But I didn't think that's what the legislation said we were supposed to do. A lot of people are trying to come up with a solution that meets the legislation. But the legislation does contemplate that.

>> VICE CHAIRMAN WENDORF: Recommendations. And not bringing information to Congress for them to sort through. Okay. Maria?

>> MARIA PALLANTE: I think that we've just gone completely full circle. So we started with the premise that there are many people who want regulatory recommendations in the report, and, in fact, they are already in the legal recommendations.

And then we had a market report that my view of, which was focused a lot on regulations and not enough on actual market development. So my comment, which started this discussion, is that we need maybe a little more on actual market development in the collaborative sense which is also in the report. So if we can agree on that, then I think that we're all on the same page now.

>> VICE CHAIRMAN WENDORF: Our Chair has a comment.

>> CHAIRWOMAN DIETRICH: I think because I am not a lawyer I am getting a little confused here. But what I believe that I am hearing George and Jim saying is that what we would regulate would be that there would be standards. Am I following that correctly, Jim? George? That there would be standards?

>> GEORGE KERSCHER: Functional requirements --

>> JIM FRUCHTERMAN: That the standards have to meet.

>> GEORGE KERSCHER: And then you can get there any way you want. EPUB will support it, and if I was sitting on this Commission that was figuring out where that bright line is between this is accessible and this is not, EPUB would meet it, PDF, UA, and not this version but maybe next, and MathML is needed in my opinion. Whether the publisher's required to put in descriptions of important graphics, that would be up to this group to decide. And that would be a collaborative effort, as I see it, between the different stakeholders in developing that market model. So I see that access board as being part of the collaboration in developing that market.

>> CHAIRWOMAN DIETRICH: Okay. So essentially what we are talking about regulating are standards.

>> GEORGE KERSCHER: Functional requirements.

>> CHAIRWOMAN DIETRICH: Sorry, George. We're talking about regulating functional requirements. Bruce, how is that different from what you are saying?

>> J. BRUCE HILDEBRAND: Functional requirements. That's a valid term as long as -- and I understand when George references EPUB. He lives and breathes and helped create it. But as long as we do not get down into the weeds of specifying

file formats, what we've offered as a broader, which I think George can support as can most of them here, if we're moving towards this 508 refresh, or WCAC, then we're moving into an area where we would have a standard that the industry across the spectrum, because it's not just us as we've all agreed. But the other thing is it would set standards that the schools could agree to. It would run from K through professional life. It would have federal funding. So we've got all of the elements for a standard based on using an established entity, and in this day and time with the type of federal funding that's available, I don't see any new entities being created.

And, believe me, you should see the comments coming in from around the globe pro and con right now from all kind of sources coming in saying what about this? What about that? Why don't we go there? The core is that we believe in the market, of course. Two, we believe in standards. Three, what is the vehicle? And what, four, honestly is viable. I think that's where we're taking it. 508, WCAC, 508 refresh, whatever you want to call it, now we've got a standard that runs from K through professional life. It doesn't require the students to learn multiple platforms. That's where we are. And, remember, our focus as an industry is a little different. We actually focus more on the customer. And that's a term that people don't like.

But we focus on the customer, the individual, as much or more than we focus on what is this piece of the puzzle need? We've got to please all of puzzle, but ultimately it's the client for us.

>> CHAIRWOMAN DIETRICH: So what I am hear something that there would be agreement on the publisher side, and there would be agreement on the advocate side for some sort of functional requirement so, Andrew, did you want to make a comment?

>> ANDREW FRIEDMAN: Just quick. I think that we're okay, which is where I keep getting confused here. So what happened from Jim's presentation where everybody was aligned then to George's? Because I didn't really hear anything all that

different. So if somebody can just chime in, when Jim presented and we were all about agreeing upon functional requirements, and then George chimed in with basically the same thing, the conversation seemed to go awry. I don't quite get why. Maybe I missed it.

>> J. BRUCE HILDEBRAND: Two words, individual liability and regs and statutes.

>> ANDREW FRIEDMAN: One more time?

>> J. BRUCE HILDEBRAND: Regs, statutes, liability. When you throw those things in, then are you pushing back is what we fear. We don't mind standards. We don't mind an access board. We like all of these things. We want a certain degree of sameness. We want a target that we can hit at. Look, Gaeir hit it on the head. When you are dealing with my members, are you not dealing with a people that's slowing the boat down. Are you dealing with the people who are speeding it up. But there are thousands of other entities out there that will struggle. Now, one of the points that could be made is basically, and I think that Tuck is somebody out there, Gaeir knows this specifically, is many of the vendors that all of us deal with, and no matter where you are, are actually working with my members or being trained by my members, and the smaller publishers and organizations are using those same vendors who, in turn, are showing them how to achieve this thing. So let's get ourselves some standards. Let's work it through in a fashion without trying to ram regs and statutes and liability on people. If we can continue this rate of change, there will be a viable market.

>> VICE CHAIRMAN WENDORF: So there is agreement as to the need for standards. There is disagreement as to the need for a functional requirement in statute or in regulation.

Glinda?

>> GLINDA HILL: I just have a quick comment. I had hard time hearing you, but somewhere in your comments, Bruce, you mentioned a standard that would go -- or standards that would go K through forward. I thought we weren't discussing K-12.

>> J. BRUCE HILDEBRAND: No, it's the fact that if you -- okay. You teach everybody how to read English in K-12. And then we switch to Greek.

>> GLINDA HILL: No, no, no, when you were doing your summing it up, you said that we would come up with something that would --

>> CHAIRWOMAN DIETRICH: A standard.

>> J. BRUCE HILDEBRAND: A standard. A continuum standard that people don't have to switch from English to Greek to Russian in a matter of three phases of their life.

>> GLINDA HILL: But what I am saying right now is if this Commission makes a recommendation, I think we need to be careful how we make that recommendation.

>> CHAIRWOMAN DIETRICH: So because, again, I am not a lawyer and I don't understand the legal terminology or even the difference frankly between a statute and regulation, can someone just give me the words for what we've all agreed to? Because I think that we're all on the same page. I think that we're getting tripped up by semantics. Maria, can you do that for me?

>> MARIA PALLANTE: So regulation implements a statute, but they are a form of administrative law. And they have legal weight. So the philosophical discussion we're having, we're asking five discussions at this point, is can there be a creative, voluntary market that is regulated, right? That is an economic/philosophical discussion. So I would like to sum up where I think we are. I think as long as our report discusses the exciting future that a market could bring for so many different people, and then goes on to say, however, if it doesn't work out we need to regulate it, that I think we're all on the same page. And what we're tripped up on now is that the group that is charged with the market as opposed to perhaps the legal/statutory regulatory part of the report has jumped to a conclusion, and, George, I will say this delicately because I agree with most of what you said, but jumped to the conclusion that the market isn't going to work, and therefore we have to

start with regulations, and has jumped there with historical reason.

So I just want to make sure, and I just want to make sure that we represent a true market, which is an economic market.

>> GEORGE KERSCHER: There's maybe a little piece that is missing. So the AAP had Rick Bowes do research on the titles that were demanded, how often they were demanded, and the AAP and Rick's report, and I don't have it handy, said there is no market for materials that would serve people with disabilities. There's just no market there. It's too few. You have to have thousands and not hundreds. And that was -- that's been a foregone conclusion, that the Chafee population is minuscule, and it's not a market.

>> MARIA PALLANTE: May I respond to that? But, again, back to the future. One of our charges was to say if there are more people that needed these kinds of products getting to more disabilities, and frankly the market doesn't have to serve just the postsecondary community, is there anything that this Commission would recommend that would create a market where there hasn't been one?

>> GEORGE KERSCHER: I hate to go here, but if we had a Chafee population that was 10% and a provision like the Canadians Have that says if this exists in an accessible form from the commercial outlet, then you do not have the Chafee right to produce it, then --

>> MARIA PALLANTE: In fact that was the original draft of Chafee 15 years ago. Chafee would only kick in if the marketplace didn't serve the community. But we keep connecting the market to regulations in a manner that suggests that we're not willing to spend a lot of time on the report suggesting ways in which the market could work. And I think that the reason I am pushing it is I think that's a detriment to the larger disability community because the market will always serve more people than an exception could ever serve.

>> CHAIRWOMAN DIETRICH: We've got a couple of other comments for people who have been waiting for a while. Mark?

>> MARK RICCOBONO: Hopefully this fits in. Two things I do want to clarify and put in the record. One thing that Bruce said earlier, the National Federation of the Blind does not -- BLIO is not a product of the national federation of blind. It's a product of a company of which the NFB does not have controlling interest. I want to be clear that's not a product of ours and I want that in the record.

The way that I think about this is there is a market, but the market is already regulated, at least in theory it's regulated. That is, if you want to sell these items to universities, the universities have a obligation already, and a number of universities are now discussing how do they make sure that the services, the systems, the materials that they are purchasing directly that are digital are accessible? So, to some extent, it's not direct regulation, but there already is some. And I think what we're talking about actually is how do we clarify and make sure that there is some agreement about what the functional requirements are in that area to help all of us in the ecosystem understand what is met by accessible, and what will actually help us ensure accessibility in the marketplace? So when I think about it, I already think of it as having some degree of constraint. There are certain things you can't sell to a university, or you shouldn't be able to sell, and that is automatically a constraint of the market we have.

>> J. BRUCE HILDEBRAND: I want to read something that came in from one of my publishers. We don't need to legislate 508 requirements because our customers uniformly require it in our contracts. I thought that was an interesting perspective. They're already bound by contractual relationships to provide a 508 standard which, to them, is not where they say well there are holes in 508. It must be accessible because the schools don't want to be charged, challenged, or litigated against anymore themselves so they are increasingly requiring for all of the contracts at least for my members.

>> JIM FRUCHTERMAN: I think that's exactly the point of having regulation that influences a market solution. 508 is

designed to encourage vendors to sell accessible products. That's why it exists. I think that 508 does not universally apply here, but we think that we would create more of a market model if 508 applied more broadly and not to just some universities who take it on as part of their state government responsibilities, but more broadly. But that's what we're talking about. But that does have regulation in it. It may not be direct regulation by the publishers, but it may be regulations on the customers of the publishers, or the tech companies customers because 508 is mainly aimed at tech companies and not the publishing industry and create a market. I mean, a lot of the recommendations that we have are around encouraging market-based solutions where people just buy the accessible product and we're trying to make that easier and make flexible. So, yeah, I am with Bruce right there.

>> J. BRUCE HILDEBRAND: Demand and supply.

>> CHAIRWOMAN DIETRICH: So I believe that the question is really those functional requirements, if that's something that should be, and don't jump all over me if I use the wrong word here, but if the functional requirement should be regulated. Is that really -- does that sum up the issue on the table?

>> J. BRUCE HILDEBRAND: Call them functional standards.

>> CHAIRWOMAN DIETRICH: Functional standards? You prefer that?

>> J. BRUCE HILDEBRAND: I think that's better.

>> CHAIRWOMAN DIETRICH: If we say functional standards, it's sounding to me like this is something that everybody wants, and I know that the software companies want that as well because they put even more time into producing their products than book publishers do in producing their products because it takes years to get your software developed often. And so having a standard that everybody knows that they can shoot for, and it is accessible so that they have some sense that the campuses will actually be able to buy what they've created should then enhance market competition.

>> STEPHAN HAMLIN-SMITH: So, yes, if -- I am drawn back over

and over to the at this table we talk a lot about Chafee and we talk a lot about copyright law and all of those things. And at every other table that I sit at we never mention those words. We talk exclusively about the Americans With Disabilities Act and sub-part "E" of Section 504 of the Rehab Act because those are the civil rights laws that define the stakeholder groups to whom we are responsible. So those are the audiences whom I am most interested in, in making sure that we have solutions for. So when you are talking about standards, the list of standards, or of these qualities as, you know, in the -- I don't want to keep harping on this -- but in the technology task force we had very divergent opinions represented, and we arrived at a list of seven or eight very specific things that we were all finally able to agree on as reasonable, useful, doable. So if our work from that task force is going to get cut and pasted and put in for the Commission to consider and work with in this report, then I feel comfortable with what you are saying.

If that is not the content that we are talking about, then I am not at all comfortable saying that we're settled here. So I want to know where we are with that, if I could.

>> CHAIRWOMAN DIETRICH: George?

>> GEORGE KERSCHER: I agree with you. That was so well put.

>> CHAIRWOMAN DIETRICH: It was well put, Stephan, thank you.

>> GEORGE KERSCHER: The bar that you guys identify with the functional requirements is the bar that we see as being very doable today. And I agree with that. I think a group, and this is the Access Board, needs to be in a position to review that and up the bar as technology improves. And the example I've used is chemistry markup language. Once ChemML is added it will be appropriate to add that to the list of functional requirements.

>> CHAIRWOMAN DIETRICH: Thank you, George. Jim, did you want to --

>> JIM FRUCHTERMAN: No, I am doing well.

>> CHAIRWOMAN DIETRICH: Okay. Jim's doing well. So given

the work of the task force has looked at the functional requirements that they came up with is actually included in the report, then do we have consensus that we want to have some sort of -- and I'm not sure if it's right to say statute or regulation, but something that actually we're going to encourage Congress to pass to set some sort of functional standards. Do we actually have unanimous agreement on that as a Commission?

I think that in principle we do have agreement on that.

So I don't know if anybody else feels this but I kind of feel like, phew, and I think that it's probably time to make a couple of announcements.

There is one other aspect of this, though, that we need to talk about which is do we actually want to get into this discussion before lunch, Dave?

Okay. Let me lay the foundation for the discussion. I think that we'll probably have the discussion after the lunch break. And that is that are we also recommending that there be a new standards body, possibly under the Access Board, or possibly different from the Access Board, that would then be in charge of coming up with these functional requirements? Glinda?

>> GLINDA HILL: Bruce isn't here. I'm sorry, I didn't see Bruce. When you asked for consensus, I didn't see Bruce was here.

>> CHAIRWOMAN DIETRICH: Yes. So this issue of exactly who would be basically governing those standards, if it's going to be the Access Board itself, or fits going to be a recommending subset? I don't know if that's the proper term, but maybe a sub-committee of the Access Board. Is there any discussion on that?

>> GEORGE KERSCHER: It seems like there are different stakeholders than what is on the Access Board now, and different sets of knowledge. So it seems like either a separate group or a separate sub-committee.

>> CHAIRWOMAN DIETRICH: In fact, I don't believe there is publisher representation on the Access Board, so that's one key

player to obviously include.

I believe we had spoken before about the possibility of actually including a potential list of representatives that we would suggest in terms of who the stakeholders might be. Skip, we said that we can do that in the report, correct? We can actually --

>> SKIP STAHL: You can do whatever you would like.

(Laughter)

>> CHAIRWOMAN DIETRICH: Very good. Betsey, please?

>> BETSEY WIEGMAN: I was going to say that I lean towards the idea of having a sub-committee under the Access Board. They have done some various guidance before that has to do with technology and Internet technology, and they can pull in people that would represent the stakeholders that the Commission feels needs to be there.

>> CHAIRWOMAN DIETRICH: Thank you. Other discussion?

>> DAVID BERTHIAUME: Can I add one more point, and that's a very practical one, and the Department is working really hard right now on the re-authorization of the Rehabilitation Act. And I am not sure of the exact timing, but it could possibly be that we just miss, you know, by a month or so the opportunity to hop in and make those kinds of changes and get them considered because as I understand it they are moving far along in terms of markup. So that's just another thing that I think supports Betsey's point about working off an existing framework.

>> CHAIRWOMAN DIETRICH: And also just a point of clarification for those who may not realize this, the original Section 508 standards did not actually have any standards related to documents. That was not something that they addressed in that. It is being addressed in the Section 508 refresh.

Okay. So a couple of announcements here, and thank you all for this great work this morning. I think we've really made some huge progress on this issue.

And our wonderful Liz who is from Dave's office has arranged

a dinner tonight at Anthony's Pier on the Seattle waterfront. She has found way of accommodating all of us. That's at 7:00 P.M. She said that the food really, really good. They got an excellent Zagat review. What we need to know is who would like to join us tonight. So we're going to ask you during the lunch if you could check with Liz, please, and let her know so that she can confirm the reservation. And for those of us who would like to go, it's actually a fairly short walk. And we were thinking about meeting in the lobby at 6:30 for those who want to walk over. If there is anyone for whom that's a challenge, then, again, if you meet in the lobby at 6:30, we can arrange for a taxi or two for those individuals who would prefer not to walk.

How far is it, Liz? A few blocks? about a 16-minute walk? Very close. So please check with Liz on that.

(Pause)

Okay. So members who might be interested, we do have copies of technology task force, I guess it's at the back somewhere with Mary? Mary, thank you, my angel. And electronic versions are going to be available -- it's already been circulated. Okay. So if you are having a hard time finding it, or are you not sure about that, check with Skip and can he make sure that you have an electronic copy available.

So we, let's see, how long --

>> JIM FRUCHTERMAN: I think the question about circulation is beyond the members, right? Circulated to the members of the Commission, but if we want to send it to the public, something else has to happen.

>> CHAIRWOMAN DIETRICH: Okay. So we do have lunches in the back. What we're going to ask the Commission members to do is to take a very short break, let your lunch, and then come back. We do have a presentation at lunchtime. It's 20 minutes to noon right now. So Commission members please be back here in your seats within that 20 minutes and we'll start at noon with our presentation from Bookshare. Thank you. So members on the phone -- or individuals on the phone, we're also going to be

taking about a 20-minute break.

(Break)

>> CHAIRWOMAN DIETRICH: We ask those of you from the public who may be staying to observe, we're very thankful to have you here, but do please restrict any personal conversations and take them outside into the hallway.

So I would like to now welcome and introduce Betsy Beaumon from Bookshare. And Betsy will tell us about Bookshare and the role that Bookshare plays in what we've been discussing.

>> BETSY BEAUMON: Can everybody hear me okay? How is that? Is that better? Great.

Okay. Well, hello, and thank you very much for having me here to tell you a little bit about Bookshare and about, in fact, another program at Benetech which is the diagram center that is involved in working on accessible images and graphics. I will mention that in here as well. For those of you I don't know, I have tried to meet everybody here who I don't already work with day to day. My name is Betsy, and it's nice to have another Betsy in the room. I am the vice President and general manager of the literacy program at Benetech that includes both Bookshare and diagram. And for those who don't know me, a little bit about my background. I come from 20-plus years, we'll just leave plus out there without being too definitive on what that means, primarily the last half of it in the software industry.

So I come from a high-tech background, lots of stuff on the web. It's great that be back in Seattle for me because one of the organizations that I started was the first social service referral service on the web, and a whole group of agencies in West Seattle were users of my service. So it's really fun to be back here.

I guess the best thing to say about Benetech on the whole is that we're basically a bunch of techies on a mission. I am one of those people. So let me tell you a little bit about what we do, and dive into some details about Bookshare. So everything that we do using technology involves some level of innovation.

And we'll talk a lot about innovation. I know that it's come up in a lot of the discussions here today. Scale, because even when we are talking about smaller percentages of the population, there's still a lot of people to serve. And collaboration. And I know that came up a bunch this morning already. And that really is how we work. So I think these are sort of three of the main areas that you will hear as a theme that runs through all of the work that we're actually doing out there in the field.

So for those of how are really new to this, what is Bookshare? Bookshare is an online library of accessible media, and I say "media" and we'll talk about that more, but accessible materials for readers with print disabilities. We put mostly electronic books, but also periodicals from NFB news line, for example, as digital texts. And they can be used in a bunch of different ways as audio, in electronic Braille, so text plus speech in a multimodal way, and also as enlarged text. So it's a really, really flexible format used in a lot of different ways by a lot of different people. Let's talk about the Bookshare content a little bit. Ron Stewart asked me if I was going to present anything new, one of the most fun things in presenting Bookshare is I always have something new because the library grows so fast that if nothing else I have new numbers to talk about all the time.

We just passed 120,000 titles, and that's really what you might think of as books in addition to periodicals. We're adding between 2,000-5,000 books every month. Now, how do we do that? Obviously we've talked about the difficulty and the time involved in chopping and scanning books. That is one of the ways that we get books. But the way that we're getting more than 70% of our books now is through partnerships with publishers. We have over 130 publisher partners, 100 of those in the U.S. That includes 18 University Presses that I will show you in a moment. And there are another 40 that have some level of postsecondary content because I know that is the goal of the Commission is to talk about postsecondary.

And, again, I think that the fact that we're collaborating with publishers to make more books accessible faster, and we're getting books that literally are hitting Bookshare the same day they hit a bookstore, the same day they hit a Kindle, the same day they hit the nook, so this idea that somebody who never before could be in a book club with their sighted peers can now read the same book at the same time.

(Applause)

(Laughter)

So it's very fun to do, and it's very fun to hear our users talk about that.

Just a quick glimpse of some of our University Press partners. I won't read all of them. But it includes everybody from groups like Cambridge University Press and University of California Press to Harvard, Hong Kong University, MIT, Ottawa, so we have a mix of University Presses. I don't think that Peter Giveler is here, but a lot of his friends are here on the list. That's one thing I wanted to point out as I look around the room here. We actually collaborate or partner with most of the groups represented in this room. A couple not, but we can work on that, but, you know, when I look at the AAP, the AAUP, all of the different education groups, the other accessibility providers in the room, we do lots of work with all of you, and it's -- it makes the services possible, and it makes them possible in a better way.

I mentioned, and I will go into a bit more detail, that our Bookshare files are in DAISY text or BRF. So they can be used on Braille displays. They can work with any AT software that supports DAISY text files. And that also includes being read on a screen reader. So we have a lot of users who use JAWS, and though we say there could be a lot of better voices, or tools, we do that in JAWS. We give away free E-book readers to all of our members. A lot of other people use it with hardware. Stephan, do you have a question?

>> STEPHAN HAMLIN-SMITH: (Question not audible)

>> BETSY BEAUMON: It's a Braille format. But it's typically

used with people using Braille display. Electronic Braille. Some of those also use the DAISY file it depends on the display and the user.

The other thing that is coming more and more as you might imagine, and I think college campuses are really a great example of this, our people want to read books on the devices they already have for other stuff like their cell phone, like their iPad, like their MP3 player. So trying to make sure that threes format while still protected are workable in those formats is also part of what we're doing, and that is part of the innovation in trying to I'll say draft off of what the commercial market is doing out there in the hardware world.

Let's talk a little bit about who Bookshare serves. We have over 145,000 members, most of those, 140,000 of those, are students with print disabilities. So heavy, heavy, heavy on the student population. We have numbers of people that are members through organizations, and those organizations vary in what they are. They could be libraries, schools, universities, colleges, et cetera. Over 8,000 of those members are postsecondary students. We have also university partners, and I know that those of how are familiar with AHEAD, and I welcome you to come to the Bookshare booth at the AHEAD, we have a university partner's program. We have 30 colleges and universities who as Gaeir explained earlier have gone through this painstaking process of scanning books and making them accessible that way.

We get scanned books from our university partners, and I think one of the things to note that we have done increasingly well over the last few years is add quality in. So in some cases those universities or colleges have spent tons of time to make those books super high quality after doing a scan. In other cases, they need a little work. So we proofread all of them as we do with all other books we scan. And I think that's an important note because coming out with quality as well as timeliness are both important.

So that was a bit about sort of who we are today, and what we

are working on. Let's talk more about where we are going. The interesting thing is that really we're there doing something in all of these areas already. But I sort of brought up sort of three problems. You could call them challenges. You could call them opportunities. But I think that they are issues that we face today. And you've basically hit on all three of those this morning. One of them is what is accessibility? Is it just text? We'll talk about more of that. How do you sustainably serve all students who need accessible materials? Bookshare we are serving a Chafee audience. I know there is a lot of discussion how do you go beyond Chafee? How do you serve students that need this multimodal format but can't get today most of the time?

And then the other problem is and how do people find accessible materials? There are whole bunches of people around this table whose organizations have and provide accessible materials. In fact, most of the people around this table.

(Laughter)

So how do you go find those? So I just want to dive into each of these for a moment and we'll go through them in order. One of the reasons I put them in order, by the way, is to really talk about the second one you have to talk about the first one. Because it kind of starts to say, well, what is accessible? What does that mean? And I know that comes up in many conversations.

So is accessibility just text? Hmmm, no. What is ideally accessible? Well, it includes text, it includes images, it includes math, it includes video, it includes interactivity. George even mentioned chemistry and ChemML. So to some degree there is a bit of as technology and we can do more of these things the bar for accessibility continues to go up. But also it doesn't mean that kids don't need that today. If we get really great at math over the next few years in making that accessible, that doesn't mean that the kids in school today don't need math already. So I think some of these are how do we get to serving the needs that are already there. In other

cases as with interactivity, it's an increasing issue because more and more the materials themselves have to be interactive. Let's talk about some of the solutions. We've talked today about EPUB 3. That's super exciting to be able to have accessible text from creation. And, you know, I look forward to the day when every single book is published in a way that all of the text is accessible. In the meantime, there are a bunch of other groups like ours, like Andrew's, who are out really saying, "How can we make sure that books that aren't borne digital, materials that aren't borne digital, are made accessible? How can we work together to make that happen?"

The other piece when you start getting into images in math, we run something called the Diagram Center, and that's the digital image and graphic resources for accessible materials. And diagram is funded by OSEP out of the Department of Ed. We're charged with coming up with tools, standards, and processes really on both sides of the equation, on the production side and on the consumption side. So it's great if have a bunch of accessible images in graphics, but if you don't have any tools that can read them or recognize them, that's a problem, and vice versa. So diagram is approaching this in a number of different ways. I will say that our partners in the diagram center are people that you know well. NCAM out of WGBH out of Boston, and DAISY, and George is one of our direct partners in the diagram center.

So as you can imagine we're looking at this partly as a standards issue and looking and saying what are the standards that need to be in place so that if I am a publisher and I want to produce, and we talked a lot about standards a few minutes ago, what are they? What do they look like? So we're doing direct work now on the standards to make sure that they are in place for the future. Some of the other areas that we're working on include crowd sourcing. So in some cases if you are going to do an image description, for example, I would love as an engineer to sit here and say that the technology can solve everything and just magically describe an image for somebody

perfectly. But, in fact, I don't think that that's really quite possible, at least not right now and not for the foreseeable future.

So how can we get more people involved in some of those processes so that if they don't come out accessible from the get-go, or if there are books that are already out on the market, how do we make sure that those images and graphics are accessible? Finally, some of the other pieces involve tools for vendors. So one of our goals is let's work with all of the publishers in the diagram center and make sure that there are tools that make it cheaper and easier for publishers themselves to make their materials more accessible from the get-go.

One of the ways to make markets work better is to make it cheaper to produce what you want. And so that's one of the things that we're really trying to do in diagram. And, again, a number of the people's groups around this table are on our advisory boards or working groups, and we've been privileged to bring together some of the smartest brains in the field to come together and start to solve these problems.

It's not a long leap from images and graphics into video. And there's work by NCAM, groups like Smith Kettlewell to do more work about how do you make video more accessible? This isn't just about the video that might get shown on You Tube because it's entertaining, I mean, these are educational materials that are now in video, or video embedded in what we used to think after textbook. And finally if people say what keeps me up at night? I don't think that you will of the stuff I have just talked about and math which we are also touching on in diagram that I didn't mention just then, I don't think that those are way out of our reach in solving. We know the problems. They've been around for a while. But the new area is really when you start to get into things more interactive. So I come from the software industry, and I think it's, you know, important to think about the fact that more and more and more of the educational materials are software. They're not books. They're not files. They are software. They are a

bunch of data in a database somewhere that comes together to create a bunch of materials that a teacher's going to use, or a professor is going to use. So more of those are going to start looking like video games which are, by their nature, a immersive, interactive experience. So you think about how do you immerse somebody in an experience that they can't see or that they have issues perceiving. That's where I think we have a lot more work to do as a field. And I'm not sure if the Commission is going way down that path, but I think that we need to look at the fact that, again, whether it's regulation or purely on the technical side just standards around what are educational games which will be educational materials more and more look like?

So I think that these are some of the areas that we are currently focusing on today and looking to focus on each more. And I think that the key to solving this is lots of smart people and continuing advance of technology and using it wisely. So, again, I mentioned the diagram center briefly. We are developing a large number of tools, practices. I invite all of you to become involved. Our website is diagramcenter.org. There are a number of great matrixes up there of existing production and reading tool products and how they handle graphics and math. Frankly, even on the Bookshare side of thing I refer people there because it's a great list of accessible technology. So I encourage all of you to get involved. I will be around as well and happy to talk with anyone who is interested.

So the second problem I mentioned is how do you sustainably serve all students who need accessible material? This question has come up for a long time. I think that the group earlier discussed the concept of market models. And, you know, what I see in there is really when it comes to actually applying them, and not the theory of how they might work or what you all have to recommend, but on the ground it's really leveraging all of the resources out there. Some of those are clearly commercial.

But there's also public and non-profit resources that I think that we need to bring to bear on this. And there are different approaches. And we're actually exploring both of sort of these two major ones to make this happen, which is creators selling AIM through their own portals so, you know, I have to say if I were a publisher and I were selling a bunch of materials and I want them to be accessible, I want to sell them, and I want to sell the accessible version and the other versions.

And so how can we, again, as groups around this table work together to do that? And that's something that we're exploring with a number of publishers today in Benetech is how can we help you make sure that your materials are accessible so that you can sell them to a broader audience?

The other piece is, of course, in some cases particularly for smaller producers, there might be a benefit to having specialty distribution channels. Again, from my past in software, we dealt with distribution channels all the time. It's a standard operating procedure. You sell certain things direct. You sell other things through distribution channels, and so it may make sense in certain cases where there really are specialty accessible distribution channels for accessible materials so people know where to go get those. And both of these models are viable. Both of these are, again, something that we're in discussion with producers about now. And I think that the other note I put on here is that I'm calling these creators. I am trying hard not to just say publishers, because creators of educational materials are all sorts of companies. They are all sorts of people. It is not merely who we think of as publishers. They are software companies more and more and more, people who identify themselves as software companies as all of new higher ed know, faculty who have been creating materials for years are going to continue to be creators of materials, it's just now they can do it faster, easier, and with more multimedia in it.

Lastly, don't forget students, more and more the creators of materials that end up getting covered in classrooms are the

students themselves. They're sharing them. They are doing videos. People in the courses have to actually respond with those and work with those as part of their materials. So, again, I think that our challenge is looking at all of these different types of creators, and how do we make all of the different types of material that they are creating very quickly accessible?

One example of what we're doing today, I have on the screen a picture of O'Reilly's website where they are selling books, and they are actually are selling books in a DAISY format. I am not sure if all of you knew that. O'Reilly is the leading producer of technical publications. When they offer books in a DAISY format, guess where they get them? From us. Because we're putting them in DAISY and giving them back to sell and offer in DAISY. Because that's something that they believe in, and that's something that we can help do, and, again, we are happy to work with any other publishers and any other creators to do that. So, you know, cheers to O'Reilly for actually selling books in multiple formats.

So how do people find accessible material from all of the sources out there? And there are a lot of us as I mentioned. I know that you are already talking about Federated Search, and I want to give you our perspective and what we're doing today in the Federated Search world. I am saying Federated Search and device access because I think it's funny to say the old view of Federated Search, but the sort of existing view of Federated Search is you go to a website, and you have a search where you can find a bunch of stuff, and there are great examples of that which I will talk about in a moment. But we're also looking at this as how can you go into your device without having to go to a separate website, think like a college student and take the device you have in your hand and search for accessible materials.

So the good news is that you can get at both of those the same way, and that is by having a API, an application programming interface, for those of you who love all of the techie talk,

and we have such a thing. And we have about I think in the low 40s now, a number of partners using our API. And they're both using it from a AT, assistive technology standpoint, as well as kind of that website search standpoint. And this is something that I encourage everyone to do. We hope that everybody kind of takes that lead and continues to offer ways that people can maximize the findability of all of our materials.

We have a number of examples of this. One example of a API user who I think is seeing value in partnering with us is the Access Text network who Gaeir mentioned briefly earlier has included a Federated Search on their site. I think right now it's in beta. It uses our API to pull Bookshare books so that along with books from Learning Ally, and Access Text itself, those are great examples of ways that you can put different resources together. We obviously have different backgrounds and how we come at the problem, but we all have materials to add. So I think that's really beneficial. And just as a note, I think sometimes we get questions about what's the difference between what you do in higher ed and what Access Text is doing? I know that you've probably had Access Text presentations and such, but just a couple of the differences. I mentioned that Bookshare is scanning books. We're getting books in from colleges and universities themselves as well as from publishers. All of our books are in a repository in an accessible format. That's one of the great values to the Federated Search that, ATN, if I can use the shorter version, has done so that people can find books already out there in an accessible format. I do worry that there is still a lot of pressure on a DSS office if they still have to put the book into an accessible format, that is still additional work for them. That's where we can come in and help if we have the book. It's already in an accessible format. We also encourage students directly to be members of Bookshare, certainly we want to work with the Universities, But we also think that it's important to have students be direct members so that they can independently go in and download books.

Both their textbooks and the novels that they hopefully want to read on their own, as well as maybe need to read for some of their courses. So I think those are just some key things that are a bit different. We are happy to see that Access Text like us that we've been doing for five year or owe is doing this model where you can get universities and colleges contributing books back that are in accessible formats. So that's a great move.

So a few examples. I mentioned Access Text. We also have a number of device manufacturers who are using our API to make it just super, super easy to come in and find a book, download it, and use it without having to ever go separately to the web. And I think that, you know, again for those of us who maybe are not college age, we still think of, well, of course, you go to the web. But I think if we talked to some of the students around the table, more and more it's just the device, and bring me what I want on this thing that's in my hand. So that's something that we're actively doing today.

I know we are jumping through time, but I want to do a brief demo, and this is going to be mostly a sound demo because this is a little hard to put something from a iPad on a screen without all sorts of special stuff. So I am going to just show we also use our API in the work that we do, so we have partnered to come up with a iPad and iPhone app. It goes directly into Bookshare from anywhere you are with a connection, and if I were to say -- I am going to search on "history."

Sorry, I don't have the Apple voice turned on here.

>> Apple voice: Results. Results 1-35 of 35.

>> BETSY BEAUMON: I searched on "history man." There are 35 books in the Bookshare collection with "history man" in them. That could be anywhere in the book. One thing we do that's great for college students is we have a full text search. So you can actually search for every word in everyone of the 120,000 books in Bookshare to find the topics that you are looking for. So I will do a quick --

>> Apple voice: History man. Download started.

>> BETSY BEAUMON: I will do a download. And as you know, it's also interesting to do such a thing as a live demo, but this thing is so fast and so good that have done this all over the world, and it's really amazing.

>> Apple voice: Download completed.

>> BETSY BEAUMON: We've just searched and downloaded a book from Bookshare in, oh, it tells me, 12.157 seconds. And would I like to read it? Yes, I would.

>> Op will voice: Opening book.

>> BETSY BEAUMON: Now it will open it and I won't put you through reading the entirety of the book, but just to give you a quick example of it coming on. And I have the voice going a little slowly here which I can update. Sorry, I can't do this upside down. I am still not that good.

(Laughter)

>> Apple voice: Navigation section.

>> BETSY BEAUMON: So, of course this is in DAISY format, so it navigates to where I want to go. I know many of you can't see this, but there are a number of different sections.

>> Apple voice: The new science.

>> BETSY BEAUMON: Now, of course, I can go into settings, I can update the speed --

>> Apple voice: Speed 190%.

>> BETSY BEAUMON: Now, a lot of you or your students do listen that fast or faster. If I want to say that's great, I can go back in and then start reading the book at --

>> Apple voice: (Reading at rapid pace)

>> BETSY BEAUMON: That's just an example of how you can take technology, putting it to use with a commercial product that has great accessibility built in, add some important features, and come out with something really great that a lot of students can use.

So beyond that, that's really the major stuff that we're working on going forward. I just want to hit on a couple of policy things, and I'm really brief because I know you guys

have talked about policy a lot. But just more from a practical perspective because we're out in the field doing this with students everyday. And I know that there has been a lot of discussion about Chafee and what happens with Chafee, and we work under Chafee, under Bookshare now obviously. We don't support the enlargement of Chafee. I think that there are probably people out there that think we do. We don't. We think Chafee, the population that it's meant to serve make sense in Chafee. We also, though, don't support the removal of Chafee.

There is a safety net need there that just doesn't go away overnight I'm sorry to say, and not maybe overnight is a long time before that could go away. What we do support, let's improve the usefulness of Chafee. What we see out in the field is just lots of confusion. And it creates problems that mean that the people that need these services and qualify for them have trouble getting them. So I think that's a big part of it. And the biggest part of that, of course, gets around learning disabilities and really specific learning disabilities versus what is physical? What is organic brain dysfunction? Those are the old words that are in there that really cause a lot of confusion. So I would say just from a practical standpoint for people serving 140,000 students today, those cause problems, and it just creates a lot of concerns of liability and other things among educators that I think is problematic. And, again, we are talking under Chafee only about students with significant disabilities that affect print.

So in conclusion, I'd say Bookshare's highly successful. We've really been heavily in the education market only since 2007, since October 2007, with some funding from OSEP, thank you. We've been fulfilling these needs, relative to a lot of other organizations really on a lot less money. Part of that is using innovation, using collaboration, and finding ways to go to scale. I think serving students in the next 5-10 years which is what this Commission cares about, at least that long, you know, it does require new technology, and it does require

new business models. Plain and simple, it needs both. Those are really critical.

And, finally, to get to both of those it really can't just be pure market. I think that we've seen that doesn't work as a lot of people have said, but it also needs to be the market. The market, non-profits, government, all have a place in this to make this successful. And we see ways that all three legs of the stool can work together. So thank you very much.

(Applause)

>> CHAIRWOMAN DIETRICH: Thank you, Betsy. Any questions from the Commission members? Tuck?

>> TUCK TINSLEY: The two free E-book readers, what are they?

>> BETSY BEAUMON: It's Victor reader soft from Humanware, and read out loud from Don Johnston. We also have in one that's kind of more of a beta, it's a Firefox-based reader called Any DAISY so you can bet a beta version of that as well.

>> GEORGE KERSCHER: Just to clarify on the population. Are you talking about Chafee. So you serve people who are dyslexic and who have also people who have learning disabilities, same population that Learning Allies serves?

>> BETSY BEAUMON: Correct. And, of course, people with other physical disabilities that do not allow them to read books.

>> LINDA TESSLER: Do you have a support line, someone that I can call and get questions answered?

>> CHAIRWOMAN DIETRICH: And, please, everyone, a reminder to speak into the mic because we do have people on the phone and they're not able to hear the phone bridge unless you speak into the mic.

>> LINDA TESSLER: Do you have phone support so that someone can be -- can ask a question and get their answers auditorily?

>> BETSY BEAUMON: Yes. So we have both phone support and e-mail support. Some people prefer to work on the e-mail side. We have a "contact us" right on the Bookshare site that covers all aspect of Bookshare.

>> LINDA TESSLER: How does someone become a member?

>> BETSY BEAUMON: Wow! I like your questions! These are good. Someone become as member in different ways depending on who they are. We have members, again, ranging from real young to even older than me. And so you can become a member directly as an individual by going to Bookshare.org and signing up. You can also become a member as a student through your college, university, or school. And, again, our encouragement is that each if somebody has signed up through a school, that they become an individual member as well.

>> LINDA TESSLER: Is there a phone number that you become a member, a phone number that you can call? Is that possible or not possible?

>> BETSY BEAUMON: It's possible, which, you know, you would think I would know that off the top of my head but I don't because I never call it. Yes, it's possible to do it by phone or, again, online.

>> LINDA TESSLER: How do you get your books?

>> BETSY BEAUMON: So I have talked about some of the ways which are directly from publishers, is really our biggest, current you is supply. We scan books all the time. We have a quite active book request program. So we will take student requests, and this is another important point. If a student requests a book, we will go find it and put it into Bookshare. And, you know, sometimes we say, "Hey, could you please send it to us" if we have trouble finding it. In the K-12 world it's amazing. We get these stacks of books. It's phenomenal to the point where I have a picture of one of my staff that you can't see over this huge stack of textbooks.

>> LINDA TESSLER: Thank you.

>> CHAIRWOMAN DIETRICH: Lee, do you have questions? Anyone else for questions with Betsy?

>> CHAIRWOMAN DIETRICH: Thank you so much for coming in and speaking with us. And you guys, will have a booth here at AHEAD as well? So any Commission member or anyone on the public that would like to talk to the Bookshare staff and have more questions, feel free to visit the AHEAD booths which will

be opened, Stephan?

>> BETSY BEAUMON: Wednesday, I believe.

>> STEPHAN HAMLIN-SMITH: They open Wednesday 2:00. And all of the authorized entities do have booths at the AHEAD exhibit hall, as well as the Access Text Network, and AMAC out of the University of Georgia. So it is a great place for people to stop in and get to talk with people one on one if they are interested. And it is opened to the full public.

>> CHAIRWOMAN DIETRICH: So any of you still here Wednesday afternoon, you have that opportunity to get a little more one-on-one time and get demos and things like that so that you can really understand better what we're talking about.

Thank you very much. We are going to move now into a very short break, just a 10-minute break here so that people can clean off their areas and do whatever you need to in 10 minutes. And then we'll come back at 12:50, please, at 10 minutes to 1:00.

(Break)

>> CHAIRWOMAN DIETRICH: Commissioners, can we ask you to take your seats again, please?

You all get the advantage of the fact I am not feeling great, so I am not the normal time monster that I usually am.

(Laughter)

So to start off this afternoon session, I am going to ask my vice chair Jim Wendorf to summarize what we did right before the break.

Jim?

>> VICE CHAIRMAN WENDORF: Well, I'm going to attempt to summarize, but then I want to open this back up for discussion. As we were privately trying to summarize for ourselves where we were, I think we sensed that perhaps we didn't have all of the Commission listening and taking part in the summary before we broke. So -- because it's such a critical issue, I think it's worth re-visiting, and I just want to make sure that we have that and all of the people and the interested parties here. I think that Linda will be back soon. But I think we have

everyone else.

Let me give this a shot. I know whatever I say is going to have to be edited and addressed on the fly from all of you. So what we thought happened was that we had achieved consensus that the Commission should make a recommendation to Congress that some sort of standards board be created, or that the current Access Board be expanded or in some other way be modified in order to set standards for AIM.

Further, there was discussion that the Commission would recommend that there be teeth in this other recommendation, and that there be a requirement that developers of instructional materials, all materials, all kinds of developers, be held accountable to create accessible instructional materials. And there may also, and I ask this, there may have been a related recommendation that institutions of higher education also be required to purchase those, only those that are accessible. I may not have that one right. So that I think summarized where we were, but whether all of us, you know, said yes so that we have consensus, we're not quite sure.

So edit away, and discuss away based upon what I just summarize, if you would. And maybe, George, if you wanted to -
- does that fairly represent where we were, or do you want to -
-

>> GEORGE KERSCHER: No, I think that's good. I think that clarification that it's software/hardware and content, that both of those pieces are included. That's the only modification I think I heard.

>> VICE CHAIRMAN WENDORF: Okay.
Jim?

>> JIM FRUCHTERMAN: Maybe you captured this. I was trying to follow all of the different parts. Rather than mandating a single accessible format that instead the Access Board or whatever this entity is should aim for functional requirements so that new technologies can be invented as long as disabled people can use them according to the functional requirements.

>> VICE CHAIRMAN WENDORF: As long as the materials met the

standards that were set, there may be a variety of formats that would be able to achieve that.

>> JIM FRUCHTERMAN: Right.

>> VICE CHAIRMAN WENDORF: Okay. Any other discussion? Any other discussion about that? So that would be a powerful recommendation to put forward.

Yeah, okay.

>> J. BRUCE HILDEBRAND: On teeth, your second item, the requirement the development of instructional materials as modified by the statement by George which includes software, hardware, course management systems, the entire range --

>> VICE CHAIRMAN WENDORF: Content.

>> J. BRUCE HILDEBRAND: Yeah, that's involved in the system be held accountable -- that's a very broad term. I am trying to get a better definition. Be held accountable. How? Why? With what?

>> VICE CHAIRMAN WENDORF: That they be required to produce instructional materials that are accessible that meet the standards by a standards board.

>> J. BRUCE HILDEBRAND: I'm trying to split this baby a little bit. We've got two, if you would, and I mentioned it earlier, very, very different groups. One is the larger publishers who have resources, commitment, et cetera, to produce accessible materials. We have thousands of others who may not have intended for their materials to be used in a postsecondary environment, who only have a single work, who have neither the skills nor the financial resources. Now, those are the ones, and Gaeir's pointed this out earlier, that if we write -- and I don't know how you break this. We'll have to figure this out. Maybe Maria can lend us her wisdom on we would do this, but how the heck are we going to deal with these two very, very different groups of one publisher, per se, and the other through the 6,000 other providers that Balcor identified.

How do you deal with them? Because if you deal with them as one, you will cripple a lot of the small ones. You will just

exclude them from the market. And you are bringing some of the neatest technology in right now, and some of the neatest content that's emerging quickly. Technology has buffaloed a few people, but it's really opened this space up. So what do we do with the rest of them?

>> VICE CHAIRMAN WENDORF: Good question. My own response to that would be --

>> J. BRUCE HILDEBRAND: Closer Jim.

>> VICE CHAIRMAN WENDORF: My own response to that would be exactly what you said. That innovation, the kind of innovation we want may actually be best able to happen with those smaller providers, those smaller developers. That's where a lot of innovation happens on the margin, not necessarily with the Queen Mary's. So they may have in their own business models, the size of their companies, and their approaches, they may actually have the means to achieve, you know, this particular end.

But Mark had his hand up. Mark?

>> MARK RICCOBONO: I guess I would say that if, you know, either the small -- and I guess we're back on publishers again which I hate getting hung up on that. You know, I guess the question is, are they going to produce stuff in a digital format, in which case it should be accessible if it will be used in higher education. I think the training aspect is what gets at what happens if someone's work gets picked up incidentally? But if someone's going to produce a technology for use in the postsecondary market specifically, and I think there is a whole universe of those folks, I think that's really what we're talking about. And a lot of the small publishers may still choose to produce print books in which case we know what to do with print books.

>> J. BRUCE HILDEBRAND: So we would have to write in an exemption for print from birth?

>> VICE CHAIRMAN WENDORF: Would that exception be in place through Chafee, for example?

>> J. BRUCE HILDEBRAND: I don't think legally you are there

because you write a very broad all must be accessible. All materials employed in a postsecondary environment and all systems, software, hardware, and course management, et cetera. Now, that is about as broad as you can hit. That's everything. Now, how do you then make an exception for somebody, for example, who writes obscure work and it gets included in a literature class? I don't know.

>> VICE CHAIRMAN WENDORF: Jim?

>> JIM FRUCHTERMAN: Having sat on a couple of previous disability regulatory advisory committees including the Section 255 and Section 508 original advisory committees, when Congress passes laws like this, they have to grapple with exactly the issue that Bruce is coming up with. And, again, I'm not a lawyer, but I remember in 508 the legal standard was unless it presents an undue burden. So, in other words, you've got to make it accessible unless it would be an undue burden. So the idea is that you wouldn't drive a small entity out of business to accomplish an accessibility goal. The same thing goes for the Americans With Disabilities Act. There are a lot of things that you should do under ADA, but it's not this absolute thing where you have a \$50,000 building, but you have to spend \$500,000 to make it accessible.

There are legal standards built into these things so that the balancing act between the social objective of the law or regulation is offset against a reasonability test on what you can afford. Of course, in many cases on borne digital materials, what's achievable without an undue burden is quite easy, right, because more and more these things are intrinsically accessible and you have to work to make them inaccessible. We'll have to work that in and Congress will if they accept our recommendations.

>> ANDREW FRIEDMAN: The point is we also have to put a timeframe around this. You are not going to be able to all of a sudden launch something and say this has to be impacted tomorrow or a week from now or a year from now. Establishing what is the timeline that the standards come into effect is

going to be hugely important. You are going to need reasonability standards around them as Jim said as well. And I'm also not sure why we think putting them in effect will actually hurt people being innovative. You are just creating a standard that allows them to innovate around. I don't particularly agree that all of a sudden because you have a higher level of standard that will help more people stymies innovation. I would argue that I don't think that happens.

>> VICE CHAIRMAN WENDORF: It might do the opposite.

>> ANDREW FRIEDMAN: Right. I think that we have to be reasonable in our approach and have the right timeframe around it and make sure that people have -- not that I know how to do this either, but somehow the attorneys will have to figure that out with us. But we've got to get the bar up. We've got to make the bar in the right direction to help more people right -
-

>> J. BRUCE HILDEBRAND: Isn't that the purpose of the standards board that we're talking about here? If we don't direct it, that we establish it to provide a direction?

>> VICE CHAIRMAN WENDORF: To set standards. As George said, minimal, right?

>> J. BRUCE HILDEBRAND: Look, you've got framework already with Chafee and the other. Now, there is debate on how Chafee might somehow be interpreted, and it's addressed in this document, and it would be primarily, and our support is, and Mark's support is that this become a congressional review. We review it in toto. We don't try to piecemeal it. We don't try to direct it. We give it to Congress which is what they've asked, okay? So now let's go and we're going right back into let's create without telling it how to do its work the standards organization, the board. There has been and Betsey's argued for -- well, not argued for, but pointed out that there is capacity right now within the Access Board and with minor tweaking you've got a vehicle. We seem to have agreement around we want to go for useability, useability objective.

I don't know another way I like it better. Instead of specifying formats. So, all right. We've got a standard. We say let's have standards. We say that we've got some existing standards with the 508, and the 508 refresh, or whatever your favorite term is. Now, why don't we work within that and let the market drive, and then where there are exceptions in the market, and then we go to Tuck, and we go to Braille, and tactile, and all of the other, and then we go to the other things that cannot because of high cost and scale, if you will, that can't be achieved in a market, and then we've already endorsed the fact and the OCR's directive or letter and guidance and FAQ said where it cannot be met then there should be accommodations. So that's the system.

So if you want to raise it a level, Andrew, let's get some standards. So that's why when we say "statute" and when we say "reg" let's just agree that, okay, let's push it towards the Access Board. It's agreed by the OCR that that would appear to be a viable vehicle. Can I say that, Betsey?

>> BETSEY WIEGMAN: Regarding the accommodations? Is that what you are asking?

>> J. BRUCE HILDEBRAND: Well, to set standards.

>> BETSEY WIEGMAN: To set standards is a good way to go. I'm sorry, can you hear me now?

>> J. BRUCE HILDEBRAND: Yes, ma'am.

>> BETSEY WIEGMAN: OCR would still investigate any complaints we got case by case. So any set of standards would not have that kind of protection where complaints would no longer be investigated. But a set of standards does seem like a good starting point.

>> J. BRUCE HILDEBRAND: There is your threshold. And that would be fine.

>> VICE CHAIRMAN WENDORF: Let's have some discussion of that. George and Maria?

>> GEORGE KERSCHER: I am trying to understand it.

>> VICE CHAIRMAN WENDORF: Are there questions you want to ask in order to get there?

>> GEORGE KERSCHER: Say it again. I just don't get it.

>> J. BRUCE HILDEBRAND: Okay. You want some sort of, if you will, level so that the accessibility that you want would be met. But let's not call it a reg. Let's not call it a statute. But it's usable across the broadest spectrum.

>> GEORGE KERSCHER: Right.

>> J. BRUCE HILDEBRAND: So that's a standard.

>> GEORGE KERSCHER: Right.

>> J. BRUCE HILDEBRAND: Now you are looking for standard setting. How do we do this? And we've got terms like "regs" and terms like "statute" and terms like "laws" but we say the whole argument is met particularly from the tech side is we do not want to set formats. We can't to achieve useability. So we are agreed on that. So now we go to the next level and let's say where do we put it? And is there an extant method, means, or organization to do it? And we say, yes, the Access Board does that, or will. No? And we know that they are moving to 508 refresh, WCAG, whatever you tech heads call it but they are getting there to create a standard. Now, from the big publisher side, their point is we have a standard and it's called like our clients, and there is this lady sitting at my left named Gaeir. Ask her about it. She is frustrated that everybody is not doing it. But there is more and more of our contracts have a 508 requirement, and they interpret that to mean it's accessible because the argument has been sometimes that the 508, even if it means the 508 standards, that it's not truly usable but we know that's shifting. So it's all moving in the direction you want, and you don't retort the market by creating barriers with regs and statutes and silos.

>> VICE CHAIRMAN WENDORF: You are advocating that the Access Board itself be the body that handles this, and in a manner that matches what they are doing with 508. So, I don't know, George, if that explains it.

>> GEORGE KERSCHER: So my understanding of our consensus is that some group, I don't know if we decided, some Board would

be responsible to set those functional standards that would be regulated, that would become the law of the land, you must meet these minimal product standards in order to enter the marketplace, right?

>> J. BRUCE HILDEBRAND: Maria, please weigh in?

>> VICE CHAIRMAN WENDORF: Prior to our breaking for lunch, I think that's where we were. But I don't know if we all agreed. But I think that sums up I think where much of the discussion ended up.

Maria, do you want to add?

>> MARIA PALLANTE: Yes. I think so. And I think there is disconnect on the second point you made. I think there is some very wide agreement that a standards board is a great idea, and that it should be charged with creating certain functional, minimal requirements, and that the publishers will participate in that as will every other player in the ecosystem.

The disconnect is the dotted line to the legal recommendation put forth by Mark as to creating a cause of action against publishers if they fail to follow those. And this is where we have two kind of divergent points of views. One is can we prevent publishers from publishing in a way that doesn't follow those standards by law? Or should it be a market solution which some feel hasn't worked, where some publishers can choose to not follow those standards, but then the university cannot allow their faculty to purchase those materials that don't meet the standards. So you have two sides of the coin. What Mark and others have said is that the universities have always had the burden. It's too hard. They are decentralized. Students don't want to sue universities. Faculty can't be controlled. More or less.

The question I think for this group is: Is it fair because that is somewhat of a mess and not working to shift some of the burden to the publishers? And the other issue I have is just a legal issue. I don't think that we'll get consensus on this part of it. We have consensus on standard board good. Functional requirements should be set. Let's try to create the

market together. I don't think that you will get consensus on whether you can get publishers to only publish following certain standards. That's a huge question for Congress. The best this group can do is to put in the very strong opinions of some that that's something Congress should look at even though it's new.

>> VICE CHAIRMAN WENDORF: Okay. Stephan, you had your hand up.

>> STEPHAN HAMLIN-SMITH: I don't want to derail this line. If Betsey wants to speak to this directly, I can wait.

>> BETSEY WIEGMAN: Thanks. I had a point of clarification which is as I am listening to this now there is some confusion about whether standards promulgated by an access board would be legally enforceable or not. And it can cut both ways. I just wanted to explain that for those less familiar with it, which is that the current Access Board has created quite a few different sets of standards, and a lot of those are just guidance, and they are not enforceable, and some of them have been adopted or incorporated into regulations like the physical accessibility standards which are now part of regulations and those are legally enforceable. So you can go either way with standards developed by a board like the Access Board.

>> VICE CHAIRMAN WENDORF: Okay. Thank you for that. Gaeir had her hand up.

>> CHAIRWOMAN DIETRICH: I just want to make sure that during these discussions we always very clearly distinguish between hard-copy materials and digital materials because I'm not sure if it's purposeful or not, but people are doing apples and oranges here, and you need to realize those are two completely different things. There is nothing about the OCR letter that's going to restrict campuses from purchasing hard-copy books. That's not the same thing as digital materials. So I just want everybody to keep that clear in their minds.

>> VICE CHAIRMAN WENDORF: Okay. Thank you for that.
Lizanne?

>> LIZANNE DeSTEFANO: And in my comments about sort of where

decisions are made, I never meant to imply that that system is broken and that faculty can't be controlled. I was trying to convey the culture of an institution of higher education which really is academic freedom and faculty driven. I don't mean to imply it's broken. I just mean to imply if this is going to work, faculty may need to be educated about how to make those decisions.

>> VICE CHAIRMAN WENDORF: So you are not accepting the status quo. You are saying that if we want to change the status quo, then faculty development needs to be added to the recommendations?

>> LIZANNE DeSTEFANO: Yes. And one thing I have a little question about when we talk about campuses purchasing things, I don't exactly think that is really a very accurate depiction of how educational materials are acquired by the students. There are cases where campuses may purchase a license for something, usually software or something like that. But in most cases faculty make a choice about what materials are being used. They put that choice on the syllabus. They may order that in the bookstore. But where the student actually acquires that material is not regulated in any way. So sometimes when we talk about campuses purchasing, to me that doesn't fit all the scenarios that we talk about in how students acquire educational material.

>> VICE CHAIRMAN WENDORF: Good point.

>> J. BRUCE HILDEBRAND: Adopting is the word.
Maria and then Jim.

>> MARIA PALLANTE: And Lizanne I wasn't responding to you. I was responding to NFB and their lawyer in the past.

>> LIZANNE DeSTEFANO: I just wanted to clarify.

>> MARIA PALLANTE: But I think this is a really important issue that you've put on the table when you say what faculty choose to teach with is not regulated. The reason we're having this discussion about a private right of action which just means students can sue publishers -- or sorry, Bruce, I

shouldn't say it just means that because that's a big deal.

(Laughter)

Is because the universities are already liable, and it's such a different thing to say to a faculty member maybe you could get to full professors but not adjuncts. It's such a huge thing to enforce that some advocacy groups would say it's not working so let's look at someone else in the ecosystem and create a cause of action for them. But we're starting with the premise that universities may be liable even though they may not be able to implement control over instructional materials being assigned.

>> LIZANNE DeSTEFANO: I think liability is one aspect, but also trying to be practical and think about how such legislation could be effective is part of our charge as well.

>> VICE CHAIRMAN WENDORF: Thank you. Jim, and then Stephan.

>> JIM FRUCHTERMAN: We're simultaneously touching on 6-8 different recommendations to report. That's important to keep in mind. It's hard to keep track of 8 recommendations simultaneously. So Lizanne's comment about universities buying things. For a lot of content that's true. But concerns have been brought up when the university implements a registration system it tends to be university-wide or school-wide. When you build a learning management system and your centralized I.T. department makes it available, those are the things where there is a centralized purchasing, where accessibility should be part of the requirement. And then we'll have to deal with these other issues about a lone professor assigns a piece of information for students that no one else has seen before and what do we do about it? What's the back stop?

The other issue is that we started the conversation about the market model and the technology group. And I think that other than seeing the technology recommendations actually get really implemented, I don't think that we spend a lot of time talking about the regulatory details about how that will be carried out. So the Access Board recommendation is, you know, sort of

here's what has to happen. Here is what we think could help make it happen. And then there is a separate recommendation, and here is how the legal environment will have to encourage this either what's today or something more enhanced than compared to today. So other than seeing that it really happened, I am not spending as much time tinkering with the legal details. Sometimes people are confused, well, do you mean there has to be a law, ta-da, ta-da, ta-da? Well, I didn't go that deep.

>> VICE CHAIRMAN WENDORF: I draw a distinction between making recommendations about policy and making recommendations about law. I mean, I know there is a big overlap there. To me, policy has a lot to do with values. What values are we putting forward with policy recommendations versus our sitting here, and we've got a few lawyers, thank you, but we are not setup nor are we qualified as a Commission, it seems to me, to make the kind of very specific kinds of legal changes in law. But changes in policy that would be carried out through changes in law? Absolutely.

Stephan?

>> STEPHAN HAMLIN-SMITH: So two different topics, quickly. Better?

>> VICE CHAIRMAN WENDORF: Uh-huh.

>> STEPHAN HAMLIN-SMITH: The first is that in terms of if there is behavioral change, that this Commission seeks to see in the broader higher education, postsecondary education world, I would not discourage you from considering law and regulation as a way to motivate that.

While we would all like to believe that best practice and the right thing to do is what makes people do things, in the real world of higher education when things are tough and constituencies must be prioritized, what makes checks get written are the laws and regulations that make priorities happen. So that is one topic pertaining to the higher education community if you need to motivate, or we need to motivate actions in that world.

The second piece, and there are actually three things. With the Access Board, my only concern, and I was shaking my head at Bruce which was unfair. I shouldn't have been staring at you. Exactly. But my only concern would be that if we include -- and I think we will be including something about an access board and standards and that type of thing -- I think that we should be very clear in directing specifically the types of representatives that would be included. Sometimes because of the limited resources that that group works under, they don't have access to the expertise that they need in order to be as effective as they could be. I think that we would be very good to them to be very directive about that.

And then the third thing was I'm curious about the answer to George's question, which understood George's question to be what happens if like so if we have standards and all of the good people do all of the right things, but what about the few bad actors who don't play by the rules? What happens to them? That's how I understood George's question. Did I understand correctly, George?

>> GEORGE KERSCHER: Yes.

>> STEPHAN HAMLIN-SMITH: What's the recourse? Or is there recourse?

>> GEORGE KERSCHER: Yes. I think that the legal requirement is --

>> CHAIRWOMAN DIETRICH: George, mic.

>> GEORGE KERSCHER: -- is that they make this accessible. And I suppose the implication of that is do they have a private right of action against the offending, naughty software developer?

>> STEPHAN HAMLIN-SMITH: And so I am wondering if there is an answer to that question that doesn't get us tied up in the words that seem to get us tied up today.

>> VICE CHAIRMAN WENDORF: I think a couple of things. First, is there agreement about Stephan's number two point which if you would quickly restate it, but that in whatever recommendation -- I think I got it -- whatever recommendation

that we make that we actually specify the kind of expertise that should be represented on that standards board, right?

>> STEPHAN HAMLIN-SMITH: (Indicating affirmatively.)

>> GEORGE KERSCHER: And how they get funded.

>> VICE CHAIRMAN WENDORF: And how they get funded. Is there a count to 5? 1, 2, 3, 4 -- 6.

(Laughter)

So we've got that. The bone of contention, the rub, the difficult thing here has to do with enforcement, right? And what kind of power of enforcement, and what are the consequences, legal and otherwise, what are the consequences for those who might not meet the standards that are established by this group? And I think one of the questions that we have to ask ourselves is looking at the status quo, are we satisfied with where things stand now about achieving AIM for postsecondary students?

>> J. BRUCE HILDEBRAND: Status quo?

>> VICE CHAIRMAN WENDORF: Yeah. And so does that -- if we are not satisfied, should the recommendation include both a timeframe by which, you know, the standards have to be included or met in instructional materials and at least make it clear that applies to all, all developers. So that's really the question. Bruce, you are certainly opposing that.

>> J. BRUCE HILDEBRAND: I want to go back a little ways. Not to your current recap. Stephan, there is this system called the market. And it is literally driven by demand.

>> STEPHAN HAMLIN-SMITH: My question was semi-rhetorical.

>> J. BRUCE HILDEBRAND: My turn. Anyway, look, you know that there is the ADA. So there is a hammer out there, right?

>> STEPHAN HAMLIN-SMITH: But it doesn't do this.

>> J. BRUCE HILDEBRAND: How do you make the hammer meaner may be a question without actually hurting anybody? And this goes to your point with your ADA and your 504 is that we keep talking and then leaving the subject of better educating faculty, administrators, whoever. The lawyers involved in litigation are pretty well educated. They've been sufficiently

frightened, and they are advising based on the grapevine I have, and comments that Gaeir and others have made, is everybody is quite sensitive. NFB contends there is not enough people suing, ask Gaeir and she will tell you that, in fact, there are plenty of people suing them.

>> STEPHAN HAMLIN-SMITH: But --

>> J. BRUCE HILDEBRAND: Let me finish, please. Here is the key point. I know that among my members, which, again, represents the larger ones, is that it is absolutely cutthroat right now to see who can grab market share away from the competitors by making their products more accessible, okay? So the demand side, along with -- and the demand is pushed by the 508 and other requirements because I have gotten four e-mails in the last 15 minutes saying, "Our contracts are all beginning to read accessible."

So that is already occurring. So we talk about your people don't have enough resources. The university is driven particularly by academic freedom. But we've got the hammer already. Let's set some standards. Let's all get at the table and figure it out. And I guess that means I am going to be at the table one tech from a publisher house and 22 of you again and we'll figure it out.

>> VICE CHAIRMAN WENDORF: But there are 23 people behind you.

(Laughter)

Just kidding.

>> J. BRUCE HILDEBRAND: It takes that many. I'm not that bright, you know.

>> VICE CHAIRMAN WENDORF: Stephan, Mark, and then we want to move toward of wrapping up and moving to next steps. Did you want to respond or no?

>> STEPHAN HAMLIN-SMITH: No.

>> VICE CHAIRMAN WENDORF: I thought you did.

>> STEPHAN HAMLIN-SMITH: I do appreciate -- I mean, so what I understand mostly is Bruce is putting forward that folks who don't choose to play by modern rules are not going to be play -

- are not going to be playing at all eventually. Okay.

>> VICE CHAIRMAN WENDORF: Mark, did you have a comment or question?

>> MARK RICCOBONO: A comment. I wish that were true. I think if this Commission is going to recommend that a set of functional requirements is something that we would like Congress to implement, and we would like them to implement it with the Access Board or whoever, we have to suggest and recommend to Congress, I think, that there be accountability for enforcement. Maybe we want Congress to decide what that mechanism is. But what's the point of having functional standards if the students were talking about don't have a means to know if that was met, and they don't have -- again, they have to wait. And I know there's a whole ecosystem of things that we're talking about here, but I go back to how long do you want Chris Toth to wait to know he has access to the math classes? And I understand I come from the point of view of representing the actual people affected.

It's not about suing folks. It's about knowing that we have a good functional standard, and we know that in those cases where there are students who are impacted in a negative way because somebody did something wrong, and I think we should come to the table thinking that most people are trying to do right, that they do have a mechanism that's clear to them about what to do. And I think if you asked Chris Toth as an example, he flailed around for a long time because he didn't know there was a mechanism. So I think if we're talking about that we care about having a functional standard, we should connect that to a recommendation that there is some mechanism for enforcement.

>> VICE CHAIRMAN WENDORF: Thank you. Gaeir, did you have a comment?

>> CHAIRWOMAN DIETRICH: I just want to remind us that from the objectives and scope of activities that we are required to as part of our comprehensive study make recommendations related to the development of a comprehensive approach to improve the opportunities for postsecondary students with print

disabilities to access instructional materials in specialized formats in a timeframe comparable to the availability of instructional materials for postsecondary, non-disabled students. And the bottom line is on the campuses we cannot do that -- we cannot do that if we get digital materials that are not accessible. Period. End of story. We can't. It is physically impossible for us to do so. So I am perfectly comfortable with setting this as a policy statement and leaving it up to Congress to decide what the legal ramifications are, but I think if we don't include the fact very clearly to Congress that without standards that have to be conformed to, we will not have this, and this is what we have specifically been asked to do is say how can we meet that timeframe? This is the only way that we can do it.

>> VICE CHAIRMAN WENDORF: Okay. Thank you. Glinda?

>> GLINDA HILL: One point to the standards issue. I know no one wants to hear about K-12.

(Laughter)

But K-12 the whole issue was about standards, and that was the deal. It was about getting the books to the kids in a timely manner, and how to do it in a timely manner, and this recommendation came from publishers, consumers, and from the field, and it was the standards and, of course, a repository, but the standards was the big piece. So that's something I think everyone needs to remember. It was about standards.

>> J. BRUCE HILDEBRAND: But you came with a format, right?

>> GLINDA HILL: Pardon?

>> J. BRUCE HILDEBRAND: But it came with a format?

>> GLINDA HILL: I didn't say format. There was a standard.

>> VICE CHAIRMAN WENDORF: There is consensus here about standards and about a recommendation, you know, to make sure that those standards are established, and there is not yet consensus that those standards need to be enforced. I've not heard a timeframe yet, although, George, that's something I think that your task force had looked into, a date certain by which time this would be -- this would be put into effect?

>> GEORGE KERSCHER: Wouldn't that be --

>> VICE CHAIRMAN WENDORF: It was Mark? Okay.

>> GEORGE KERSCHER: Wouldn't that be part of the -- so the access board committee, sub-committee, is going to make recommendations that go into the regs and they get vetted through the process, public review and all of that stuff, and then it becomes effective at a certain date? Isn't that the process?

>> MARIA PALLANTE: That's a good way to do it.

>> VICE CHAIRMAN WENDORF: That would be a process. And, Bruce, I think that you suggested that, right? The Access Board and then -- okay.

Glinda?

>> GLINDA HILL: May I make another suggestion? One of the things that happened with the K-12 piece, too, is in 2004, when we were told this was to happen, we also lost the money that we had to --

>> J. BRUCE HILDEBRAND: I can't hear you.

>> GLINDA HILL: We lost the money that we had to do evaluation, too, in the same re-authorization of IDEA, the Office of Special Education programs lost their evaluation and research money. So we could not do an evaluation of the implementation of this. So we've been criticized constantly that we don't have the evaluation data to say, you know, how this all unfolded. But we did not have money to do the evaluation. So I would recommend that any changes that you are recommending, that you already request that Congress put -- add money into a budget to do evaluation.

>> VICE CHAIRMAN WENDORF: Very good point. I see heads nodding, and we all know evaluation makes or breaks any kind of project. And it's something with the stakes being so high on this, we've got agreement that be included. Good. Okay.

We are going to move on at this point. I think further discussion would probably need to be based upon language actually put in front of us so we can see how this plays out, you know, in front of us. But I think we've got at least a

couple of options here, and I heard some agreement from Bruce and from George about the Access Board itself, about some sort of sub-set of the Access Board being charged with this, and that regulations, regulatory process, could be part of how some of these things are actually implemented. So we will take that and start to fashion it into language and to see how that works for all of us, okay, as follow up. Thanks for that discussion.

>> J. BRUCE HILDEBRAND: I was asking Betsey, do they have an extant operation under the Access Board? We don't need subset of something, do we?

>> BETSEY WIEGMAN: I wasn't taking that as a legal term of art. I think a sub-committee, a specific group of people within the Access Board?

>> J. BRUCE HILDEBRAND: Is that what you mean, Jim?

>> VICE CHAIRMAN WENDORF: I'm sorry. I have two conversations going on.

>> BETSEY WIEGMAN: I thought it was Saab-committee or group of people from the Access Board?

>> VICE CHAIRMAN WENDORF: That's what I heard. A group specially dedicated under the Access Board specially designated to carry this out, is that it?

>> J. BRUCE HILDEBRAND: Isn't there a body addressing this?

>> MARIA PALLANTE: Jim, I think that you just inadvertently put a compromise on the table. I don't know if you meant to do it, and I don't know if will make George happy, but it would bring the publishers further than they want to go as well. What you said is let's have the Access Board charged with what the minimum requirements are, what the timing should be, and whether they should be regulatory or not. That's a little weaker than us saying from the start that these things must be regulatory. But it is a good middle ground. If we're trying to get to a place here, I would put that on the table now.

>> VICE CHAIRMAN WENDORF: Well, let's talk about that.

(Laughter)

George?

>> GEORGE KERSCHER: Okay. So I would expect that by

Christmastime, maybe the 1st quarter of 2012, there will be guidelines, recommendations that come out of EPUB for accessibility. I mean, that's our plan at least, including software to support it, validation tools, so on and so forth. So those kinds of things are going to be in place, but no regulatory piece.

And this -- you know, I've heard that this access committee made up of so many people, Bruce is going to have somebody there, and a techie from the publishing community, and it just sounds -- now it's beginning to sound very painful.

(Laughter)

>> J. BRUCE HILDEBRAND: All of it will be painful, George, whether it's regs or statutes or litigation or anything else. This to me is probably the smoothest method because we're recommending that, you know, on annual or semi-annual meeting, let's puts it all on the table, let's see what's working, what's not, and let's go!

>> MARIA PALLANTE: We could certainly as a Commission recognize the work that's been done to date as starting point for the Access Board if that's what are you asking, George. In other words, you wouldn't want to start over because you already got this work about to be -- to propel us forward.

>> GEORGE KERSCHER: No.

>> MARIA PALLANTE: That makes a lot of sense. We could incorporate that as the starting point.

>> VICE CHAIRMAN WENDORF: The EPUB recommendations could be part of what we say should be -- should guide the development of standards. Is that fair to say?

>> MARIA PALLANTE: It should be the starting point I think is what George is saying.

>> CHAIRWOMAN DIETRICH: That limits the file format then, which is what we were trying to broaden.

>> VICE CHAIRMAN WENDORF: To include but not limited to.

>> MARIA PALLANTE: Include but not limited, good.

>> VICE CHAIRMAN WENDORF: Or EG.

>> GEORGE KERSCHER: I think the functional requirement is

what we were agreed upon.

>> CHAIRWOMAN DIETRICH: Yeah.

>> GEORGE KERSCHER: And right now I would say there is one - if you are going to include MathML, which I think, you know, is one of the functional requirements, the rendering of math in an auditory form --

>> J. BRUCE HILDEBRAND: I can't hear you, George.

>> GEORGE KERSCHER: If the access -- is the Access Board the right mechanism? That's a big fat question mark in my mind. But MathML is obviously needed. It's built in to EPUB 3. It's built into DAISY. It's an obvious functional requirement in my mind. MathML be provided in the content. Then the reading systems render the MathML to the person using text, speech, and tactile. Those are just recommendations that roll-off the fingertips, you know, those seem obvious to me. Those are the baseline functional requirements.

And those need to be passed on, but I don't know about the Access Board because it's so much tied up into 508.

>> MARIA PALLANTE: This would be a new group. It doesn't have to be them. We haven't made that decision.

>> VICE CHAIRMAN WENDORF: No. We've not made that recommendation, no. But most of the discussion most recently is focused on the Access Board or a group that is connected to the Access Board, or subset of the Access Board that doesn't currently exist that would look at AIM.

>> GLINDA HILL: I think it's important for everyone -- does everyone know what the Access Board is? Look on the website and see the membership of the Access Board, too. It's government agencies are on it. The membership. I'm not sure if people understand what the Access Board membership is. It's important to know that, too.

>> MARIA PALLANTE: Can I ask for a point of clarification, George? We were saying that we all agree there should be standards and there should be a body that would set them comprised of all of the players in the ecosystem. Then we argued whether we should mandate what the board should do as

law, the compromises that the board should decide what are practices and what are regs. But are you saying that there are things that you don't want the board to touch because they are already commonly agreed to? Can we separate out what the Board should be setting standards for versus things that are already best practice? Is that where we're getting tripped up now?

>> GEORGE KERSCHER: Well, I don't want us to do something that is less than what is already required.

>> MARIA PALLANTE: Right. Exactly. So how do we get out of this sandbox now? What would you recommend? What should the Board do?

>> VICE CHAIRMAN WENDORF: Jim, did you have a response?

>> JIM FRUCHTERMAN: I think the Access Board, like a good government agency, looks to Congress to tell it what they are supposed to do, right? And the Access Board would be a little bit at sea if we gave them an open-ended requirement without congressional guidance. That's not really what they do.

>> GLINDA HILL: The Access Board is appointed by the President.

>> MARIA PALLANTE: Small constitutional issue.

>> JIM FRUCHTERMAN: But under Section 508, I am sure that the Access Board was charged by Congress to write the 508 regulations and that was an advisory committee that I was on. I think that this is the essence of why we talk about both standards and functional requirements because standards alone without sort of a functional aspect can lead to some things that are not very workable. In other words, you can have something that's in the DAISY standard or the EPUB standard. You can have the entire text of "War and Peace" as a single paragraph and single page no chapter breaks, maybe not each punctuation. You can make the argument that it meets the technical standard. That's why there is this focus on functionality. Because the standard is not divorced from what are we trying to use it for?

Is a student with a disability actually able to do other things that other students are doing? Section 508 is a good

example of something where the Access Board went into a functional direction rather than making very detailed technical prescriptions and say you should only use PDF with blah, blah, blah. The person with a display should be able to do this. And that has been something that is a general move that I think that our Commission should be part of is this more functional approach to these things. And do I think getting back to sort of the essence of the technical recommendations is to say, yes, the technical recommendation should be that functionally these things are met, and we should also charge the Access Board with staying on top of that.

That was the idea of that is to watch new technologies come along and say, hey wait a minute, this new functionality we don't see how that will happen. Let's actually talk about this. Let's actually have a rule-making or an advisory process for doing this. We have to keep the functional thing in there. We actually can list examples of standards that are effective for doing this. But, you know, EPUB by itself doesn't mean it's functionally accessible. You have to actually say it has to be functional accessible, and EPUB makes it possible to do all of these accessible things if include MathML for math.

>> VICE CHAIRMAN WENDORF: Thank you, Jim. Other discussion about this? Dave has said that he will bring a member of the Access Board to the August 12th meeting, okay? So that we can hear directly from the Access Board about what they are focused on.

Okay. So to recap, that there is consensus that we would recommend that standards be set, that one of the options is that this be under the authority of the Access Board, but perhaps with a strong recommendation that certain kinds of expertise be represented in order to properly support the kinds of implementation, okay, of the standards, overseeing the implementation of the standards.

>> J. BRUCE HILDEBRAND: I have a question.

>> VICE CHAIRMAN WENDORF: Okay.

>> J. BRUCE HILDEBRAND: Based on what Jim just said, and

based on what she said, based on what Maria said, do we want to revise your statement there for a recap to functional standards and not just standards so that we keep it in a category to keep from digressing that we actually if it does not function and it doesn't work, we don't care. And this goes to his point about "War and Peace" can go from stem to stern without one page or break.

>> VICE CHAIRMAN WENDORF: I would defer to those with technical background about this, if functional is sufficient or if we need to cover more waterfront there. I don't know.

>> JIM FRUCHTERMAN: I think that was the essence of the technical task force recommendation. We didn't spend a lot of energy on the Access Board regulatory side, we just said it should look like this instead of mandating a single format.

>> VICE CHAIRMAN WENDORF: To set functional standards. Okay. And this could be run through the Access Board with the understanding that the Access Board would need more fire power, in a word, in order to properly oversee the implementation. Okay?

And then the issue of accountability and enforcement needs to be addressed, that they have the power to -- that the Board already has the power to enact things through the regulatory process, and that we could make a recommendation that that be looked at carefully about how most effectively to do that in order to achieve the objectives that are set out in our charge, right, about serving students.

So prior to this conversation, I think there had been more of a focus on going outside of the Access Board rather than going through the Access Board. That's my feeling. And that something be setup that would be separate from that because we needed something that was a stand alone that really understood the issue. So we may have achieved that, you know, an agreement, consensus, that this is a way to proceed. Okay? I thank you for that good. Congratulations.

No!

>> ANDREW FRIEDMAN: This won't hurt. You just missed the

assessment piece with funding that Glinda brought up. I don't think there are issues on that.

>> VICE CHAIRMAN WENDORF: And assessment we agreed would be part of this of faculty development which is a new term for me, faculty development. It needs to be apart of this recommendation, right? Okay.

Anything else that was missed? Evaluation, faculty development? Okay.

So I trust that our friends at the back Skip and company have this documented and we can proceed with some language, and I would ask Gaeir, let's ask if George and Jim and Bruce and you and I can review whatever draft language is put together as a result of this, and then we'll share it with everyone. Does that work? Okay? Good.

>> CHAIRWOMAN DIETRICH: Okay. Well, thank you, Jim, for running that section. We are going to take a quick break here, and let's really try and be quick this time and come back, please, by 10 minutes after 2:00. That gives you 15 minutes. So, please, this time actually be back in the room by 10 minutes after 2:00. Thank you.

(Break)

>> CHAIRWOMAN DIETRICH: Okay. Et cetera 10 minutes after 2:00. Commission members please resume your seats.

I would like to welcome Dr. Sheryl Burgstahler and Dan Comden who are with the University of Washington right local here in Seattle. So these are the guys to ask, you know, where to go, what restaurants to visit, you know, what the best pubs are right here, folks. These folks are going to help you with that. So Dr. Sheryl Burgstahler is an affiliate professor in the college of education at the University of Washington in Seattle. Her teaching and research focuses on the successful transition of students with disabilities in college and careers, and universal design to technology, learning activities, physical spaces, and student services in educational settings she founded and continues to direct the DO-IT, disabilities opportunities Internet working and

technology center, and the technology center.

And she has presented at national and international conferences that focus on international design of distance learning, websites, multimedia, computer lab, instructions, student services, and other applications and education and the management of electronic communities, work-based learning activities and transition program for youth with disabilities. She is the co-author of eight books on using the Internet with precollege students and directing E-mentoring programs and lead editor of the book universal design in higher education from principles to practice. Dr. Burgstahler has degrees in mathematics, education, and administration of higher education. She has taught pre-college mathematics, computer programming, assistive and accessible technology and pre-service/in-service courses for teachers on mathematics instruction and technology applications.

And I don't have a bio for Dan, so, Dan --

>> SHERYL BURGSTAHLER: He is with me!

(Laughter)

Okay. Welcome.

>> SHERYL BURGSTAHLER: I will start and we'll let him introduce himself. Dan and I have worked together for at the University of Washington for 50 years. Still trying to get rid of us, but they have not been successful yet. But together we've worked 20 years doing various things that we'll be telling you about. One thing that's unique about our duo here is that we're representing both an outreach program, the DO-IT Center is actually outreach, although we sometimes outreach to our own students at the University of Washington so they are beneficiaries. And then Dan represents the access technology center which is both of our projects through the University of Washington I.T. center focusing on I.T. accessibility, and then he works closely with our disability services office. So we thought we would do this fairly efficiently by starting with me giving an overview of the DO-IT center and the things that we do, particularly those related to what are you talking

about. And what our students have expressed, what they experience, and working with faculty. And then Dan will focus on what we're doing on our own campus, particularly making accessible media and particularly focusing in STEM areas.

So disabilities, opportunities, Internetworking and technology. We started in 1992 with a grant from the United States National Science Foundation, and have been funded by NSF ever since but also the U.S. Department of Education and MicroSoft and other funders. One of our projects called the DO-IT scholarship program started out with National Science Foundation funding and then adopted by the State of Washington. We have a financial base now of state money. Then we continue to get grant money for other projects. All those projects are related to the goal that we have in the DO-IT center which is simple, to increase the success of individuals with disabilities in postsecondary education and careers using technology as an empowering tool. And we tracked -- or attacked this problem from various angles oftentimes people say what kind of disabilities are you talking about? We're working with students mostly at the high school level or the college level. But at the high school level they are college-bound youth with all types of disabilities. Anything recognized by the Americans With Disabilities Act as a disability. Hearing, seeing, learning, attention, health, speech, mobility, physical skills, communication might be impacted by their disability.

In our projects we, of course, look at the literature, and we have identified the challenges that many of these students face as they pursue postsecondary education and careers. Nothing surprising to this group, I think. It will be a quick summary. Diminished support systems after high school. Many students who are college capable just don't make it to college because support systems are so different. Little access to successful role models. A lot of these students just hasn't seen a scientist who is blind or in a wheelchair like they might be. Lack of access to technology. That can increase first of all

their independence in doing schoolwork and in an employment setting, but also their productivity so that they can work side by side competitively with other students and employees. And participation so they can truly engage in a science lab and not just watch what other people are doing.

Another challenge is that the students haven't developed their independent self--- adequate self-advocacy skills. A lot of people have taken care of them in high school. They get to college and we expect them to ask for what they need, and they may not know that. Inadequate accommodations, which can include obtaining materials in accessible formats. And the thing that's mentioned the most in studies about students with disabilities is the low expectations and other negative attitudes on the part of people with whom they interact. I think that one of the difficulties here is that many people might have what we would call negative attitudes in quotation marks and they wouldn't recognize them as such, and a lot of other people wouldn't either. They're well-meaning people that want to take care of a person who has a disability rather than empower them to be successful.

Sources of evidence for the things that we do. Literature review as I mentioned. We look at outcomes of prior projects. So we're always doing a continuous project improvement plan. Suggestions from our practitioners. Input from students with disabilities. This last one I think is remark **bb1** our program is that we're always looking for our students to say what will work? What can we do next time? How can we make this better? How you can be part of the solution?

Two projects I wanted to highlight that are currently funded related to STEM, we have two alliances. One is called Access STEM and both funded by the National Science Foundation, but this is funded by the research and disabilities education program. And it's to work with students in the area of science, technology, engineering and mathematics, and to increase their successful participation in those fields. So

that's one alliance. And that's a regional alliance. Then through a different directorate, the one on computing, we have a project called access computing. This is to increase participation of individuals with disabilities in computing and I.T. fields. That one is in collaboration with a professor from our department of computer science and engineering which is also typical of our projects.

We have a lot of partners that bring in different expertise. What are we looking for? We're always looking at the prize. We of course want to make academic and career opportunities available to more citizens. But we also really emphasize this second one. We actually want to enhance these fields, STEM fields, computing fields of employment and study with the talents and perspectives of people with disabilities. That's something that we always emphasize with our faculty. We would like them to really be excited about having a student who is blind in their class to see what new things they might bring to the content that they have been presenting.

Our activities are in three areas in these projects: Students, we work with students a lot, so student success, institutional change. We work with faculty and staff. And then knowledge dissemination.

So quickly, student engagement. We have computer, science, transition lectures, workshops, academies in the summer, kind of large collection of short-term and long-term activities for students with disabilities. We take them on field trips, to MicroSoft and other places where they can meet people with disabilities and are actually working in STEM and competing fields. College and career preparation activities. We offer tutoring if they are having trouble in college with math or other subjects. We offer opportunities for them to network with each other and with mentors. We have a very strong electronic mentoring community where we provide peer support, or they provide peer support, and near peer support, and then the more traditional support from adult mentors.

We then help them develop self-determination and leadership

skills usually through action. So we'll have them participate in panels at conferences and things so that they can develop those skills. At the right here this picture shows three people. I like this picture because they are all associated with the DO-IT project. One of them has no disability. One of them has a learning disability. And then one you can see has a physical impairment. The one using the wheelchair is the mentor to the younger guys. So we do a lot of things that are cross-disability in our programs. We track our students. We've been tracking students since 1992. By that I mean that we keep track of what interventions they've been part of in the DO-IT program, that they participated in, and then we track their progress through critical junctures to STEM and computing degrees, and to employment.

And so we will keep track of whether they graduated from high school, or whether they made the successful transition to a community college, and whether they were successful there and they made that next transition to a four-year school, et cetera. And keep track of these students. One thing that DO-IT does is we have a safety net. We know if a student was planning on going to a community college and then didn't make it. And often no one is watching for that. We have a number of international exchanges, and in the student area we have a close one with Japan. We've actually sent students from here in the United States to Japan to start a DO-IT program over there at the University of Tokyo. And then we -- the students have communicated by e-mail, electronic video conferences, and Second Life.

The Second Life picture at the lower right-hand corner shows a young man from Japan who is giving a presentation in a Second Life environment, the DO-IT Island, and students in the DO-IT program on this side were watching that.

So what are the perspectives of students we're working with regarding accessible materials? They have complaints. They have some praise, too, but we'll talk about complaints. The

complaints that they have fall in three areas. First of all, we hear that publishers don't have the books available in accessible format. Sometimes this area of science some students don't feel they can pursue those fields if they need accessible materials. Or it might be available but it takes too long to get them so they move on to something else. The second category is in the area of instructors. Faculty members that don't choose materials early enough. They pass them out right at the moment of a class to get them produced in accessible format, or they post their own materials online, and they're not accessible to them, like putting up inaccessible PDF documents up on the website.

So two categories for instructors. And the institution, sometimes it takes too long to produce materials in accessible formats. I would guess in a lot of situations all three of these things are involved.

So that's working with students. Then we work with institutions. Again this is DO-IT. So we're working with all institutions around the country. And we do promote universal design with faculty members, proactive approach in their classes, and then effective accommodations when they are needed. So an accommodation as we were talking about here, just an alternate format, a service or adjustment, we emphasize that with faculty. That's when you are doing something with a specific student. Are you changing something for a specific student. Where universal design talks about the product that you are presenting, like the course. I always like to show faculty this coffee pot to make the point that sometimes it isn't the user's fault that something isn't accessible or usable. But it's the product or the environment that is the problem.

This picture here is called the coffee pot for masochists, and it shows the spout or handle of the coffee pot on the same side. Faculty would agree that if we handed them this pot and asked them to serve coffee around the room, that maybe we wouldn't just blame them if they spilled it on themselves and

others.

So universal design then we use the definition at the center for universal design is starting point. The design for products and environments to be usable by all people to the greatest extent possible without the need for adaptation or specialized design. When we started doing this 10 years ago few people in postsecondary education were talking about universal design except with respect to technology. We were using that terminology there. But now more and more faculty are asking about it and interested in learning about it.

How do we apply universal design? A postsecondary setting we apply it to the instructional or learning environment, and instructional materials, student services, information technology, and physical spaces. And we promote universal design with faculty as an attitude, and it's an attitude that values diversity. But more than that also equity. And more than that actual inclusion. So all three, diversity, equity, and inclusion. We talk about universal design as a goal that you will never reach totally but you can reach for. We talk about it as a process when they're developing their courses to be thinking about certain things during the development process. And then we talk about specific practices that can be applied to learning materials and environments so that they are, first of all, welcoming, secondly accessible. And, third, usable for everyone who might be in their class. So just a couple of examples. Arranging seating so everyone has a clear line of sight. Using large, bold fonts, uncluttered overhead displays, speaking aloud the content presented on an overhead display, providing multiple ways to gain and demonstrate knowledge using multiple senses. We use a lot of materials from the CAST center. Avoid unnecessary jargon. Define terms. Provide scaffolding tools like outlines. Buy lab products that can be used by individuals with a wide range of abilities. Address things like safety procedures from the point of view of students with different types of abilities. Arrange materials or address materials

that use materials that allow a variety of reading and language skills, and provide electronic format that are accessible.

With faculty then we conclude that, yes, accommodations are really important. But let's back up for a minute and look at universal design. Be proactive first. And then provide accommodations efficiently. Then we need to have policies and procedures that address both.

And the third area the DO-IT center provides a searchable knowledge base. We have hundreds of questions and answers, like where can I find electronic text versions of books for students who have visual impairments or other print disabilities? We have case study. One title is Earth science. A case study on teaching concepts to a student with visual impairment. And we have promising practice. A promising practice to improve accessibility of local science education programs which, by the way, that uses the students in our program who have disabilities to go out to informal science units and give them -- do an accessibility review. And then we give them feedback on making their programs more accessible.

So that's just an overview, a quick overview of what we're doing in the DO-IT program. As I promised, Dan will tell you a little bit about himself, and then talk about what we're doing at the University of Washington specifically.

>> DAN COMDEN: Thanks, Sheryl. Is this picking me up okay?

>> CHAIRWOMAN DIETRICH: A little closer.

>> DAN COMDEN: More closer? There. How is that? Better? Great.

All right. I am going to talk about accessibility at the University of Washington. I have been involved in various aspects of technology and disability for about 25 years now. And I find it a fascinating field for somebody who is interested in an interesting variety of technology. And some of the challenges that the technology provides us. 25 years ago we weren't presented with any arguments about formats. We had tape, and we had Braille, and it was easy. Well, some may

disagree with that.

(Laughter)

Now, of course, things are a little more complicated. So one of my roles, I work as Sheryl said I am part of I.T. I am not part of student services. Although I do work pretty closely with them. But I do work with all of their campus developers that are interested in making sure that their websites and applications are accessible. It's becoming an increasing issue, of course, for all of these things, particularly in the area of our home-brewed learning management system called Catalyst. And we have an excellent relationship with the team that develops the Catalyst tools, and, in fact, they just e-mailed me late last week to test another module. So it's very promising. We make screen reading, specifically the JAWS application available to these developers so that they can do some testing on their own. Although typically once they get a taste of how JAWS actually works, they're happy to pass off that testing.

(Laughter)

Because they don't like to memorize all of those keyboard commands. So I offer very quick-and-easy site evaluations on an ad hoc basis. So these developers know that they can contact either me or Terry Thompson who also works with us whom you may have heard of who we can easily provide rapid feedback to these developers. It's really nice, I think, to have this as an in-house service that they don't have to go outside of the University. We're also working with the marketing department which is now in charge of the web pages for the University. And trying -- that's an interesting group to work with because they want things to look a certain way, and they want specific features on the front page that may not and often does not have accessibility built into them. In this case, I'm talking about Flash. So we went through a period of using Flash a few years back, and eventually encouraged them to abandon that for something

more accessible.

My office provides Braille services for the campus also. We try and make this as simple as possible. If a Department needs a document produced in Braille, we have a web form interface where they can upload their document, and it has some instructions there and submit it to us. We typically have about a two-day turn-around for all of our Braille production which is pretty good. A lot of other schools struggle with that, or they have to send it out to outside agencies. And along with that we also provide some tactile graphics production which I will go into more detail about that. So we have this thing called the Access Technology Center. We share space with the media studio which is part of the computer labs. And within the Access Technology Center we have a variety of special software and hardware installed on a number of computers.

This photograph on the screen now is just some of the alternate keyboards we have available. And it's really interesting. A year ago we moved into this new space whereas before we were part of a larger computing facility. Now we are on our own, and traffic from students has decreased dramatically. So this really has just turned into a showroom and training space much more than it's getting used by students on a regular basis. And that's a good thing, believe it or not, because it's allowed to us push out the technology on to a huge number of computers so that students don't have to come to a special location. So most of the people that I see, particularly in the summertime, are faculty and staff who are having problem with repetitive stress injuries and looking for alternatives to a standard keyboard and mouse.

So in our center we also provide high-speed scanning. That's where I work with the disability resources for students office. So we maintain the equipment and the software. And the student service office, DRS, actually provides the end product to the students that are requesting it. And they also do all of the

work with contacting publishers for accessible formats. And just based on the amount of traffic that I see from their staff in our space I think that they're having a lot more luck getting them from publishers. When they do produce alternate materials, the preferred format are MicroSoft Word and PDF. We have not yet had a student request a book in DAISY format. And I am not sure why that is. Maybe because it's not being presented as an option.

I'm not sure because I am not involved on that side of things.

We do all of the Braille production and tactile graphics as well. We have equipment for both of those things. And I will talk in a little more detail about some research involving tactile graphics that we've done here.

PDFs as Sheryl mentioned are probably the main complaint of students with print disabilities and getting access to those PDFs. Huge amounts of material are posted for courses that are just a scanned image of various books. We teach -- rather than doing the work for the students, which we'll do to some extent, but we also provide the venue for the students to learn how to deal with these materials independently. Once they get out of University they're not going to have a DSS facility to make those things accessible to them. So we try to give them the skills to work with those things and take those skills out of college with them.

And then for the various access technology or assistive technology we provide that on hundreds of computers throughout some of the main computing locations on campus. So the picture on the screen now is just a small part of the undergraduate library which I think there are still some books in that building, physical books, but they are kind of hard to find. It's almost all computers in this thing now. And any of those workstations that you see in this picture can run screen readers, screen enlargement, and text-to-speech applications. So we've pushed it out all over the place and, like I said, students don't have to come to a single location, or as I've heard it referred to as the Disability Ghetto on campus. They

can work anywhere else on campus along with their peers. And then I partner with other departments, and an interesting fact about computing at least at our campus is nobody knows how many computer labs there are at the University of Washington. Nobody knows. Because it's constantly changing, and there is no -- we work for Central I.T., but we're not in charge of all of the departmental facilities that are available. It's still shocking to me. And even if we do get a snapshot of that, it's going to be out of date within a couple of weeks usually. So I partner with the School of Communication, the public health school and library associated with the School of Public Health to provide access technology in those locations as well in their computing facilities.

So that's what we are doing as far as day-to-day service. We also get involved with some research that happens on campus. And there is a lot of cool research happening at the University right now. CSE is computer, science, and engineering. And the iSchool used to be library of sciences I think, and now they're called the iSchool. So both CSE and the iSchool have some pretty active programs dealing with accessible design of products and software. So the CSE department does a capstone every year where they have groups of students working on projects to provide accessibility tools built into the Android platform. And then the AIM research group, and AIM is not accessible instructional materials in this case. We share that acronym. For them it's accessibility interaction in and mobility.

And they do a lot of work with accessible features for mobile devices amongst many other things now.

So I work with the faculty in those two programs. Typically it's to help provide test subjects for their various things, but also to provide feedback sort of real-world experiences to what they are working on. And then we work very closely with the CSE Department on something called tactile graphics which is making graphics accessible to somebody who can't see. So on the screen now is a photograph, or an actual illustration of an

eye, and next to that is the tactile version of that. So it combines lines and Braille to convey the information that a sighted person would get from the illustration. Now, we did some testing in the early stages of the tactile graphics project where we had experienced tactile graphics designers work on this very image. And the average time to produce this image was about three hours.

Which is considerable when you think about how much time it takes just to do Braille. So we tried to come up with a way to speed up the production of tactile graphics, and by using some computer learning we can take an image, a set of images, from a textbook and reduce the production time rather dramatically. And this works best in the higher education arena where the images tend to be simpler than many of those found in the K-12 system.

So on the left of the image that's on the screen right now, you can see an image from a math textbook, and it has some orange color, and numbers and letters on it. We process that, and we can use tools built into common photo editing software in order to do this pre-process step. And then the software that was developed at the U of W, soon we train it what the words look like in these various images, and then it can automatically go through and strip out all of the existing text from these electronic files, save the location where it came from, and then we can do OCR on those extracted bits of text which is much more accurate than trying to do it when it's part of the image. So you can see toward the right of the image here all of the text in the third iteration of this image is now gone.

The file in the upper right-hand corner is just a snapshot of the XML location information. And then below that is the extracted text which we can then run through OCR. So that along the bottom of this slide we see the text going through OCR, and then getting converted to Braille. And then we have a script that will reassemble all of these materials and ready to produce on tactile graphics embosser. And we got our average

time down for one of the books down less than 10 minutes per image. That is very dramatic. And as somebody who has struggled with producing these things on my own over the years, this is just a fascinating project, and it's something that is quite valuable to those of us who are doing tactile graphics production. The books that we have done have been made available -- the images have been made available for free on the tactile graphics website, and you can download the software for free.

>> GEORGE KERSCHER: Is it open source?

>> DAN COMDEN: It's not open source, no. So that's where we are with some of the things going on at the University of Washington.

Any questions?

>> TUCK TINSLEY: What is the tactile graphics workshop? The web address of that?

>> DAN COMDEN: It is [tactilegraphics.cs](http://tactilegraphics.cs.washington.edu) -- I will write it up on the screen. [Tactilegraphics.cs.Washington.edu](http://tactilegraphics.cs.washington.edu).

>> STEPHAN HAMLIN-SMITH: Sheryl, for those of you who haven't been to the DO-IT website, there are literally hundreds of resources that are available for free there as well. Can you tell us the website address that will get us to kind of the general entry portal?

>> SHERYL BURGSTAHLER: www.uw.edu/doit. That will get you to the portal. And then you can go from there to postsecondary education and on and on and on.

One of the resources we created for postsecondary education was the product of three three-year grants from the U.S. office of education, and we created a facility motif. And you go into the area where there is the faculty room, and that's to help faculty provide -- to employ universal design and accommodations for students with disabilities. And all of the content is repurposed for that particular audience. So that usually means they get the shorter story than some of the

audiences we've reached out to. And then we have the student services conference room. And that room is for career services office, and recreational facilities, and admissions offices, how they can make their programs more accessible to students with disabilities. And then we have the boardroom which is for high-level administrators.

That's a really short story and links to the other rooms. And then we have a Veteran's center that focuses on how we can better serve our Veterans With disabilities as they come back to postsecondary education. And then we have a center on universal design of education. And we're just putting up a STEM center. We keep adding to this kind of campus that we have, and it's all focused on postsecondary education for students with disabilities. Oh, and we have the student lounge, of course, for the students. We do have K-12 resources, but all related on how to get ready to go to college.

>> CHAIRWOMAN DIETRICH: Jim?

>> JIM FRUCHTERMAN: I just wanted to mention that a presentation by one of UW faculty, Richard Ladner a few years back was one of the inspiration for the DIAGRAM center. It showed us the idea of automating and making tactile graphics more accessible. Richard is on our advisory board. I know that Glinda wants to say something, too, about it.

>> GLINDA HILL: I wanted to follow up with this because I was in D.C. listening and watching that presentation. And I called Richard afterwards, and we had like an hour-long conversation, and in it I found out that he visited D.C. a lot because he is on the Board of Gallaudet. And so one of the times that he was in D.C. he agreed to come over and present at OSEP. He presented there. He and I talked afterwards about our stepping stones competition at OSEP, and he was recipient of stepping stones award last year. I hope that it had something to do with some of the things that you presented today.

>> SHERYL BURGSTAHLER: Of course. And we invited him to

join us today, too.

>> GLINDA HILL: When you talk about collaboration in this room and people working together, it's really a very small world, too. I connected him also with one of the women who is on our board, and she actually did the final thing to pull him to come into OSEP because she is on the board at Gallaudet. She made the actual connection to get him to come into OSEP.

>> JIM FRUCHTERMAN: So my question to you guys, you know, one of the benefits of being on the Commission is that we've either got on our Commission or been able to link up with some of the top disability services program in the country. And UW has both a DO-IT and research thing that has a bigger agenda as well as a top performing accessibility center, and I.T. people interested in this. These are great examples. Let's take it to the Commission's work. We're supposed to make recommendations to Congress about policy changes that improve the accessibility of higher education to students with disabilities, especially print disabilities. Do you guys have two or three recommendations on, gee, you know, if I was telling Congress what to do, here is what I would do? Because I figure that you guys have been looking at these problems for a while, and might have some insights on things that you think might be really important.

(Laughter)

>> DAN COMDEN: Well, I don't -- I don't -- I don't know who all is in this room.

(Laughter)

I don't know how careful I have to be. I don't think that publishers are ever going to make the materials that we need voluntarily. I think that there is going to have to be some sort of regulations, or statutory decisions in order for that to happen in the longer term. The stories I hear from my peers with their struggles in getting some of these materials in accessible form are not getting any less. So I don't know that without some sort of outside pressure whether or not anything

sever going to take place. From where I sit in the whole process.

It would be nice if we dealt with less proprietary formats and more open formats. I've had particular struggles with some applications that provide some accessibility to print material that I won't name right now, but I really discourage students from using some of those applications because I don't think that in the long term they're doing themselves favor by getting locked into very expensive software that still requires considerable outside assistance to use at times. It seems like some of the more open source solutions that are out there tend to be more flexible, certainly more affordable.

>> SHERYL BURGSTAHLER: One comment I have, and this will be self-serving by the way, but that's okay.

(Laughter)

I would just like to share the experiences that we had in this grant that we are talking about where we developed the faculty room and these resources. And there were four rounds of funding where you could apply for a grant for three years each time every three years. And this last round it got cut so they're not going to offer this anymore. It's a big disappointment. We have had our share of funding, so that's not a self-interest. But it's a real disappointment because what we've seen is this huge change in awareness on universal design and making things accessible on the part of faculty because there was the -- there were these demonstration projects that were funded, and that's what they were supposed to do, train faculty toward the goal of making students with disabilities more successful in postsecondary education. Now, that's died down, but I think it's had a tremendous impact on the country. And I have to say that I didn't expect that it would. I just thought of us all doing these tiny things. But enough is being done that there is an impact. I think that the same thing could be done in this area, in AIM, and getting campuses to develop demonstration sites and whatever you wanted to call them what it does is the money just like with industry,

but the money, you know, kind of directs some of the efforts on campus. And they say, okay, well, let's work on that. We that get grant funding usually have a lot more good ideas than we have funding. And where the funding is helps direct us when we do that. So that's a good way to tell campus that this is important, and so other people follow.

So that should be an important part of it.

>> STEPHAN HAMLIN-SMITH: Sheryl, I just want to be clear. The program that you are referring to -- you are not referring to creating a new appropriation line, but you are referring to re-enstating funding for the existing demonstration programs.

>> SHERYL BURGSTAHLER: Well, I would like that, but that's not the point I am making. I was talking about new demonstration projects that focus specifically on AIM.

>> STEPHAN HAMLIN-SMITH: In addition to --

>> SHERYL BURGSTAHLER: Bringing the others back to life.

(Laughter)

Both would be nice!

(Laughter)

>> STEPHAN HAMLIN-SMITH: The reason I am bringing it up is because we've had a lot of conversation around this table that we still see a great need for a continuation and an expansion of faculty training of disability professional training.

>> SHERYL BURGSTAHLER: Absolutely, yeah.

>> STEPHAN HAMLIN-SMITH: And demonstration or training programs that would support those efforts. And I just want to be clear that you would support, or you think those are good ideas as well; is that correct?

>> SHERYL BURGSTAHLER: Absolutely.

>> STEPHAN HAMLIN-SMITH: Okay.

>> ANDREW FRIEDMAN: That kind of led into my question of when you deal with teachers on campus, what do you see is the biggest gaps between what you guys do and getting instructional materials into the teachers and them understanding how to use it?

>> SHERYL BURGSTAHLER: Of the materials themselves?

>> ANDREW FRIEDMAN: Yes.

>> SHERYL BURGSTAHLER: The biggest gap is simple. They haven't given this one thought. Even if they're pretty comfortable with students getting accommodations, the typical faculty member is still in the mode of being responsive when the disability services office sends a letter to them saying they need to provide accommodations. When I first came to the University in '84 the faculty were saying why do I have to do this? Do I have to listen to this person? Do I really need to do this? You don't hear that anymore. They're about to retire if do you, so we won't worry about them.

(Laughter)

But now people are more aware of their obligations and enthusiastic to provide access for students with disabilities and now are more concerned about how do I do that? We talk about technical issues like making their PDF files accessible. At first there was push back. It was like wait a minute. I have so much to do I can't do this as well. But Dan mentioned Terry and others in our group can deliver really good presentations on how they can do that and it doesn't get overwhelming to them. But that's the biggest push back that I get. I can't do this all at once. And we've done this with our distance learning program and our faculty if they have a lot of inaccessible materials up, we'll say -- and they're reluctant -- we'll say start today. Don't worry about the old materials unless you need to find accommodations, but let's start today, and the next materials you put up put up in this format.

And our distance learning program they've taken that attitude that we're going to work on the future classes and not worry about, you know, putting captions on all of the videos that they up have there in their large collection.

>> DAN COMDEN: Something small to add to that. Everybody around the table probably has some sort of a smartphone device with them. This is a really compelling argument for accessible design. And one of the most effective things that I have been

able to do to convince faculty members that it's important to think about accessible design and accessibility of the materials that they are producing are providing to students and say let's bring it up on your phone and see what it looks like. And depending on the state of their phone, if it works on their phone I can usually find a phone it doesn't work on. And these things are doing as much to change and improve accessibility I think as just about anything else that's happening right now.

>> CHAIRWOMAN DIETRICH: Other comments or questions for the team? George?

>> GEORGE KERSCHER: So it still might be a little early for professors to be thinking about publishing in EPUB. Do you begin to see any of that, where they're looking at making sure that it could be used in a iBook, or Kindle or something like that?

>> DAN COMDEN: I've yet to be consulted by a professor on how they're going to be publishing materials. But if they Dover consult me, I will definitely put forth that as an option.

(Laughter)

>> JIM FRUCHTERMAN: What about HTML? Are they thinking about publishing on the web because these are closer than I that I lot of people are aware.

>> DAN COMDEN: I think HTML is great. We went through some legislation in Washington State a number of years ago. I pushed hard to get HTML included as the first choice for accessible format. And I would like to throw that out there as an option all the time. It's something that I encourage students to request as their format of choice.

>> GEORGE KERSCHER: So why are they asking for PDF and Word?

>> DAN COMDEN: Because that's what they know. And it's easy to produce.

>> LINDA TESSLER: What is HTML?

>> DAN COMDEN: Hypertext markup language. It's the coding system used to present all information on the Worldwide Web.

>> LINDA TESSLER: I really didn't know that.

>> DAN COMDEN: Four very important letters.

(Laughter)

>> LINDA TESSLER: Thank you.

>> CHAIRWOMAN DIETRICH: Other questions, comments?

(No response)

Well, thank you very much. I think that we definitely will get to include you on our best practices list. Thank you for presenting.

(Applause)

Will you have a booth here as well?

>> SHERYL BURGSTAHLER: Yes.

>> CHAIRWOMAN DIETRICH: For members of the public and for Commissioners Who may be staying for more of the conference, the DO-IT team has a booth here as well. That will be open starting Wednesday afternoon. They have wonderful materials on web accessibility. Lots of free stuff. So those of how are interested in that I really encourage you to get to know them. They are a great resource.

Okay. So we're going to now because Maria has a time scheduling issue where she's only going to be able to be here until noon tomorrow, we're going to turn to some of the legal issues at this point. The one that we wanted to cue up first because it's an outgrowth of the things that we've been talking about this afternoon is getting a greater explanation on the voluntary licensing scheme and exactly how that's going to be - what you all are thinking of with that.

>> MARIA PALLANTE: Okay. I think that I may have gotten mixed direction from leadership of the Commission. We can do that. Or we could do Chafee.

>> VICE CHAIRMAN WENDORF: I think that we were going to tackle the tough one first.

>> CHAIRWOMAN DIETRICH: Then Chafee.

>> STEPHAN HAMLIN-SMITH: Is there a document that we'll be referring to?

>> MARIA PALLANTE: I am now working from the document that

Skip sent out in which he has folded in the legal document.

>> STEPHAN HAMLIN-SMITH: The 21 gun salute?

>> MARIA PALLANTE: And he has re-ordered some of them. So I may need him to help me find some of them.

>> CHAIRWOMAN DIETRICH: I believe it's stapled to the agenda.

>> MARIA PALLANTE: So I think that there are actually two I wanted to do that are related. One is the rulemaking for the Library of Congress. The other is looking at Chafee and recommending that Congress just take a look at Chafee more generally. And those are numbers 17 is the rulemaking? And do we have a page number?

>> SKIP STAHL: 17 is the rulemaking.

>> MARIA PALLANTE: Okay. So 17 it's on Page 22 of Skip's draft is the rulemaking. And then is it right after -- no, no, it's not recommendation 18 for the other.

>> DAVID BERTHIAUME: It's 16 and then 17.

>> MARIA PALLANTE: 16 and then 17. Okay. Hold on. Aha! Good. And I haven't given much thought to which order to do these in. So, let's see. Let me start with 16 since Skip has them in that order. And let me just tee them up. And then no doubt we'll have a robust and fascinating discussion.

(Laughter)

So 16 was recommended actually by members of the Commission who otherwise don't have an agreed on a whole lot in the last couple of months. And it basically says "Congress should review the scope, effectiveness, and current function of the Chafee Amendment."

For those not familiar with the Chafee Amendment, it's a section of the Copyright Act of the United States. It's one of the exceptions to the inclusive rights of authors. So generally copyright provides exclusive rights to creators of content. Then there are certain exceptions that kick in that say except here you can't control your work. That's what Chafee does.

So the Chafee Amendment which is section 121 of the Copyright

Act. Congress should review the scope, effectiveness, and current function of the Chafee Amendment to determine whether each of its key component elements as well as the statute taken as a whole in its regulatory approach serves as a necessary and appropriate means for addressing the needs of postsecondary students with print disabilities, or as publishers have suggested, serves as a disincentive for serious investments and marketplace solutions. So background is that the Chafee Amendment is a safety net in circumstances where the market has failed to in the past and going forward is unlikely to ever achieve the desired results that we seek.

That is in those cases where content owners are not supplying materials and accessible formats on the open market, Chafee provides the mechanism and has to date by which others defined by statute may create accessible versions and make them available. Those others are authorize the entities, and that's one of the prongs of Chafee, and they're all represented at this table.

Chafee Amendment was passed in 1996 after substantial negotiation and discussion with relevant stakeholders, including those at the table. Including publishers, educators, the copyright office was there, and representatives of persons who are blind and dyslexic. Whether representatives more broadly of other learning disabilities were there or not, I think that's factual question we'll need to look to because one of the recommendations is to in the next one broaden that word because it's outdated which I think that we agree with. But we need to factually figure out what we can do and what happened in 1996.

Chafee is narrow because exceptions to copyright have to be narrow. They are always narrow. They are exceptions. And it's narrow in a couple of different ways. It's narrow in terms of what kinds of materials come into play. Those are previously-published non-dramatic literary works which is basically literary works that are not plays or movie scripts. Those are non-dramatic. It applies to the reproduction and

distribution right under copyright. That means that authorized entities can re-produce or distribute those materials. They can't, for example, perform the works, so the more works the works become interactive reproduction distribution wouldn't get you there. They can't make derivative works which are new works based on the underlying work. Those things require licenses.

So moving forward, I will skip a little bit. Much has changed since 1996. The market for electronic books and other instructional materials and the use of the Internet as a distribution mechanism has grown dramatically and continues to develop. Moreover, significant research on the nature and origins of various print disabilities has expanded the general understanding of how such conditions manifest themselves including to new -- leading to new perspectives on who may require accommodation and who is qualified to make the assessment.

Among the specific issues Congress could consider, should consider, must consider in any review of Chafee are, one, the circumstances which a copyright exception for persons with print disabilities is most needed and justified, for which materials, and for which populations should it be applicable. The current scientific understanding of print disabilities. The current criteria and roles for authorized entities. The nature of specialized formats. That's another one of the component prongs. In general without reading the statutory language, specialized formats has been read to mean something that will be used only by the eligible populations, and why that made sense in the past because not a lot of people were looking to use Braille other than the population, for example, that needed it.

Today what it kind of sets up is this artificial atmosphere where we are going to have two sets of technology and standards, one for the general marketplace and one for certain populations begins not make sense anymore.

And the current role and qualifications for competent

authorities to certify an individual's eligibility to be a beneficiary under the statutory terms of Chafee. All right. So lots of people are suggesting Congress should review Chafee. Why? Because that's what Congress does. Congress looks at the Copyright Act from time to time to make sure that it's relevant, does it with exclusive rights, it does it with enforcement mechanisms, for example, for copyright industries to make sure that we can reach infringers, for example, and it also looks at exceptions and limitations under the law to make sure that they are relevant. There is another report out there that we've mentioned before about whether library exceptions need to be updated to reflect technology. So the general recommendation is that it's not 1996 anymore. Shouldn't Congress be looking at Chafee?

Now, to be clear, the motivation for Congress looking at Chafee I think is not something that we probably have a general agreement on. Some would say let's look at Chafee because the marketplace has more power to solve more problems, therefore, Chafee may only be needed for very narrow circumstances, even more narrow than in 1996. On the other side of the coin would be these prongs under Chafee aren't making a whole lot of sense anymore, and we have practices that have built up serving certain populations, and we have confusion, and none of it is helping the people that need it most. So we really need to take a fresh look at it. Let's leave that there for a moment and go to the rulemaking.

So Skip is ahead of me here. Recommendation 17 came from one of the members of the legal task force who said, actually produced it saying let's not look at Chafee. Instead, let's look at the regulations for the national library service for the blind and physically handicapped. However, in the discussions that have ensued since the recommendation was put on the table, I think people have more broadly said let's keep them both. Now we're kind of discussing how they look next to each other, but, Jim, if your preference is to go back and trade one for the other, I'm not suggesting that you can't re-

open that. You missed a meeting where the two got separated.

So this recommendation says, you know, the Library of Congress implements certain regulations for the national library service for the blind and physically handicapped. Those regulations interpret and implement the scope of the population that's eligible for services under the Pratt-Smoot Act which is the Act for the adult -- what is it? I always screw this up. An Act to provide books for the adult blind which dates back to 1931. Also called the Pratt-Smoot Act, they are the same thing. And the reason that this gets confuse something that that definition is also referenced in Chafee. So if you read Chafee all the way through and you follow the little roadmap, you end up at the adult -- sorry, I keep doing this. This is brain dysfunction in action here.

(Laughter)

You end up at the Act to provide books for the adult blind. Sorry? Inorganic brain dysfunction, thank you. It's environmental.

(Laughter)

So the recommendation is that shouldn't the Library of Congress look at its regs because they are kind of old, and they are really confusing a lot of people because what it essentially means is that one of our authorized entities, NLS, national library service for the blind, has different runs than say, Learning Ally. Allies?

>> ANDREW FRIEDMAN: Ally.

>> MARIA PALLANTE: And it's possible that one could be a rule making -- the Library of Congress has the power to update its own regs. And the way that they would do that is the way any organization would do that, and they would do a rule making. Rulemaking requires going out to the public saying that we're looking at our regs, and there has been a suggestion that we should consider updating the eligibility requirement and who is eligible to certify or confirm it. That's what Skip has put up here, the eligibility requirements and the certification process. On the one hand, there is this set of

information about the history. On the other hand there is scientific evidence. What do all of the stakeholders think? And then there is a process of replies and comments that some of you have been through where stakeholders write in and say that's good idea, or that would be wrong, or you've got it partially right, and then there could also be a hearing. And it's a rigorous process of administrative law that ensures that any regulations that are enacted or updated have met a certain threshold test. Because if they didn't, then no court would be required to recognize them. That's the whole process in a nutshell.

So in some ways this is a shortcut, and it would give some immediate relief if the library were so inclined to update its regs. And I want to be clear that we can't control whether they do the rulemaking. All we can do is recommend that they do it. If they do it we can't control the outcome because that's administrative law process. So what we are discussing is whether we recommend it in the first place.

It's a shortcut because it would provide immediate relief if it were to result in updated regs in that the authorized entities that operate under Chafee would perhaps be on the same page for the first time ever in terms of how they serve people who need Chafee.

>> VICE CHAIRMAN WENDORF: Maria, question? Could we recommend that Congress make this happen, the rulemaking happen?

>> MARIA PALLANTE: No.

>> VICE CHAIRMAN WENDORF: That's not allowed.

>> MARIA PALLANTE: Congress does stat ought tos.

>> VICE CHAIRMAN WENDORF: So the library only has the authority to do it or not do it?

>> MARIA PALLANTE: Right. For this particular reg that affects only its own library the NLS.

>> JIM FRUCHTERMAN: But we could ask Congress to change this in law, and then the Library of Congress would be obliged to follow congressional direction on that, which is back to the

prior recommendation.

>> MARIA PALLANTE: Right. Exactly. So recommendation 16 changed Chafee and the Copyright Act. That's Congress. Recommendation 17 changed the regs that currently implement adult book for the blind through Chafee, et cetera. And now to the policy discussion.

So some who would really like to see Chafee updated to provide more relief to more people in a more meaningful way would say this isn't a bad idea -- or they have said let me say it that way -- but it might give Congress some cover. It's like the easy way out. If they do this, they might say, you know, the Library fixed its regs so there is less confusion so we don't need to look at Chafee. On the other end of the spectrum people have said that this is wrong to have something so important as the eligibility class for large number of people served by a major authorized entity addressed on the back end when we all know that Congress should be really looking at Chafee up front.

So the first question for this Commission I think is do we do them both, or do we do them in some order, one as the preference followed by the other? Do we think it's better to put them all in? And then we would get into what they actually say. Each one of these now reads with the general thrust of there are very strong feelings not necessarily agreement, not necessarily the same motivation, but the one for which there is the most support is that we are recommending Congress take a fresh look at Chafee.

I am happy to answer questions.

>> GEORGE KERSCHER: So for the benefit of the Commissioners, In discussions internationally, I have been going to bat for the learning disabled population, and for persons with dyslexia. And there has been major push-back internationally on the disabled population, and the memorandum of understanding in Europe does recognize persons with dyslexia, but not persons with learning disabilities.

>> ANDREW FRIEDMAN: You want to be careful because

definitions are not the same. So international definition of dyslexia is not the same as the domestic definition of dyslexia.

>> MARIA PALLANTE: George I don't want to interrupt. Just hold your thought. Not everyone knows what are you talking about. The world intellectual property organization which is part of the U.N. and we are a member, all countries with copyright laws come and meet and talk about harmonizing and new developments. And the discussion and focus for the last several years now has been serving print disabilities, but doing it both through harmonizing exceptions through a treaty or a possible document of some sort, and also a stakeholder platform of which George has been intimately involved which is more of a licensing platform. And the major discussion as you just said has come down to the definitions. So with that background, go ahead.

>> JIM FRUCHTERMAN: I have an update on that, George, when are you finished.

>> GEORGE KERSCHER: I just wanted to let people know that the learning disabled population is contentious.

>> ANDREW FRIEDMAN: Just be careful, because if you look at the definitions of dyslexia, it's a much broader overseas than it is here. So when you say learning disabled overseas, actually that definition is a lot closer to dyslexic. I think that I just said that backwards. Our definition of dyslexic is much narrower than an international definition. So it actually goes a lot broader. Just be careful.

>> MARIA PALLANTE: He is talking about Europe, and I want to point out if you include Africa it includes everything under the sun.

>> ANDREW FRIEDMAN: Right. So we have to be careful of using the broad terms.

>> JIM FRUCHTERMAN: I think a noteworthy point, and I think to continue to clarify Maria's clarification, there are two processes going on here. The one George is referring to is the voluntary stakeholder platform where the major publishers are

attempting to negotiate essentially the terms under which voluntary file sharing and the license agreement would happen. The World Blind Union which is the major advocacy sponsor for that has withdrawn from that process partly over this and other issues. And instead they've spent their time on a treaty, or a recommendation. In the last session of the standing committee on copyright blah, blah, blah, at WIPO last month, the U.S., Europe, Latin America, and African countries put forward a negotiated text that merged four different proposals.

I think that there are noteworthy things about this. But I want to say that the United States government is sponsoring a document at WIPO that has some of the following terms. It uses the definition of "disability" that is according to the U.S. modelled after our Chafee Amendment. They've thrown out other language and used "authorize entity" which is the U.S. term. They define a person covered by this copyright exception or this recommendation as a person who is blind, has a visual impairment or perceptual or reading disability, or any other print disability which cannot be improved by the use of corrective lenses to give visual functions substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability or is unable through physical disability to hold or manipulate a book or to focus or move the eyes to the extent that it would be necessary for reading.

So I think that it's kind of a noteworthy point that the World Blind Union has been pushing more successfully to represent people with learning, reading, perceptual disabilities than we are right now in some of our proposals. And I know that it's another part of the U.S. Government, right, it's not a treaty that's been approved or adopted or anything like that, but that the United States government, the Obama Administration is up there saying, U.S. would be okay with this language in an instrument done under international copyright law. And what is this definition? This is a functional definition of

"disability." And the essence of what our recommendations are on Chafee has been worked through this functional standard of who needs this? They should get it. And not who should need it because they might want a book for free.

It's like who has a significant enough disability that they really need this service?

So I am kind of amazed. I think that it's incredible progress that these groups got together to co-sponsor a common text.

>> MARIA PALLANTE: I agree, it's very exciting. The whole process is very exciting. Obviously we're at a document exchange phase. But if your point is that there is leadership and discussions happening that have not happened for a long time, then, yes. Now the question is what do we do with it here? And coming back to this with that background, what George's point was learning disabilities could be something that would slow us down, is that your point? Or that it's something that we should roll over? I wasn't sure.

>> GEORGE KERSCHER: I have been promoting the functional side of things rather than the medical side of things. And I think that's in line to be consistent we would want to pull that in line with this language, the functionality.

>> MARIA PALLANTE: So, in other words, Congress should in reviewing Chafee look at functional definitions?

>> GEORGE KERSCHER: Yes.

>> MARIA PALLANTE: As one of the things that it should review to see if it's up to date and sensible?

>> GEORGE KERSCHER: Right.

>> VICE CHAIRMAN WENDORF: Speaking not as vice chair, I think that it would be tremendously helpful to go in this direction looking at function. I think that the language Jim just referenced is helpful and hopeful. The terminology I think matters. We would be the last one to say, oh it just has to be learning disability, period. That's not going to cut it. Not everyone with a learning disability needs this stuff. But learning disability, or specific learning disability is the

legal term of record in the U.S. enshrined in federal law. Dyslexia is not. It's not in there. It's referenced as an example of something, but I think part of our job I think is to try to find consistency. And I think being careful about the terms that we use is going to help to do that.

Learning disabilities of sufficient severity to prevent the reading of printed material in a normal manner which is kind of sort of a, you know, lay version of what Jim just read out.

>> GLINDA HILL: From the World Health Organization.

>> VICE CHAIRMAN WENDORF: That is really helpful in getting way at a medical model and looking at functionality.

>> MARIA PALLANTE: Chester, did you have a comment?

>> CHESTER FINN: Yes. I think the information that Jim just gave is going to be in line with what you will see down the road because of the Charter for Human Rights. And part of working on the charter and when we talk with different countries about it, they did not define each of the disabilities in a category because they didn't want to leave out people, but they also wanted to make sure that everyone was included. So part of some of the things that the President and the Senate will be looking at was, you know, some of those definitions that didn't define people, but defined what, you know, the functionality was of a disability and how it described, you know, what the person would need or what it would do for the person. So you're going to see more and more of that, you know, rather than just having, you know, things defined as, you know, we do in this country.

>> MARIA PALLANTE: Thank you, Chester.

>> CHESTER FINN: So that people won't be left out.

>> MARIA PALLANTE: Thank you, Chester.

>> STEPHAN HAMLIN-SMITH: Is there a way in either 16 or 17, is there any way for there to be an alignment of the beneficiary classes of people who are protected and receive services under the civil rights' laws and people who are apart of the exception under the exception to copyright law? And if

not, I fear this is a relatively unproductive conversation to our task because then we are still left with -- because let's be clear. There is a huge number of students who go well beyond the traditional one or two forms of a specific learning disability that we may be most familiar with, or as specific as blindness or visual impairment that we are familiar with who colleges and universities every single day have to provide accessible media for as a reasonable accommodation, and so while I appreciate that the copyright work is important to one piece of the conversation, I am concerned about can we align beneficiary classes?

And if not can we have some conversation about -- or can we tie this to an actual product that will help the students?

>> MARIA PALLANTE: Yeah, I would like to respond to that for a moment. That's a perfect comment and very productive. And I think it's actually where we started when we first started to do the legal landscape back whenever that was Dave, January. We started out by pointing out the different standards and definitions, and in the different laws all of which everybody needs to comply with, right? They are all federal laws. One doesn't trump the other. So when you are on the ground trying to do good work at a university, it's really, really hard.

So I think from my perspective, this is just off the top of my head, I think that when are you looking at 16, which is Congress should review Chafee, we now have two things specifically that we want them to review and keep in mind. One is function. And two is that there are desperate definitions in other federal laws. That would be the two guiding principles for their undertaking of their review of Chafee. Obviously we can't control the process of Congress looking into Chafee. And there is also the backdrop that Chafee is an exception to copyright. So the broader the definition of people to be served, the harder it will be. So what might be productive is to figure out what we mean in this room when we say "learning disability" because if that's something that we feel strongly about putting down in an exception to copyright

as opposed to the market because the market we don't care. It can serve everybody and anybody. But for an exception we have to keep in mind that if you wanted it to be successful in legislation it has to be workable and not so broad that it's not an exception anymore.

With respect to Recommendation 17, which is the reg under implementing current law, there I think that we are hand tied little bit more only in that the regs right now even if they were updated still have to implement the Act to provide books for the adult blind as it exists now. And unless it got switched to implementing an updated version of Chafee, we're back to the question of is it blind and dyslexia? Is it learning disabilities? And I think that it's a harder case for learning disabilities there because I think that it is pretty clear that in the legislative history that it was blind and dyslexia at the table.

>> VICE CHAIRMAN WENDORF: Again, back to terminology, just to say learning disability I think is the wrong way to go. Learning disabilities or individuals with a learning disability who have a reading disability that ta-da, ta-da, ta-da, because it's an umbrella term, and under that umbrella, and a big under that umbrella are reading-related disabilities, dyslexia is the term used most often but not always.

>> MARIA PALLANTE: So what I would like to recommend is could you and Jim Fruchterman and George put together what you think a working definition could be so that we can insert that and float it and try to perfect it? Because I kind of feel like otherwise we're making a recommendation in a vacuum. Does that make sense?

Jim?

>> JIM FRUCHTERMAN: I want to make several points about these two together.

>> MARIA PALLANTE: Yes.

>> JIM FRUCHTERMAN: Again it's this conflation with what the objective is with the mechanism for making it, right? And though these two recommendations cover similar territory,

they're written from very different points of view. Recommendation 16 includes an editorial from the publishers about Chafee is a disincentive for market-based solutions. Something that I think blowing smoke. And whereas 17 written primarily from an advocacy standpoint. I think that merging these and separating the what the regulatory or legislative approach from what's our objective would be good. And I think that both of them have substantial topics. And I think that the editorials from both the publishers and from the advocates are worth including from this, but not actually in the recommendation text, but in sort of the content of this. And so a few other points I think are worth being made. George has not had a chance to talk about this, but Chafee included digital text. Okay? So often we kind of portray Chafee as being sort of in the archaic background of time. But when you talk about digital text, you know, I think people kind of knew what we were going to get because the reason you wanted digital text was so we could produce large print, synthetic audio, and Braille. And that's what we're getting today. So that's in the Chafee law of 1996. So the other thing is that this question of whether dyslexic people or learning disabled people were at the table. And George was at the table along with a number of the other advocates. And I think that it's worth hearing from George on that topic at this point in this discussion because you said could we please have background on that, and George can talk about it at the time George talked about the issue of dyslexia versus learning disabilities because it was as confusing -- almost as confusing then as it is now.

And yet at the time RFB&D was serving more than half of their people were not people with blindness or traditional with physical disabilities but learning disabilities and dyslexia. Anyway, I'm not -- I had actually submitted 17 as a relatively limited in scope way to address this issue to solve a problem that is being faced right now nationwide with people saying, "Kids with dyslexia don't qualify. Kids with dyslexia do

qualify."

And I think Gaeir gave us data that helps to us zero in on what's the scope of this and I believe that you testified that 1% of the students in community college are getting text accommodations. This is a proper scope for a copyright exception. I think 1% is the number that is often thrown around.

>> CHAIRWOMAN DIETRICH: 1% are qualified for it. Probably half that actually receive it.

>> JIM FRUCHTERMAN: Yeah. We're talking about a tiny number. We're talking about students with very real disabilities. And I think that, you know, it might get to Stephan's issue. If it covers all the people in the California community college system getting text accommodation, would it solve the problem from AHEAD standpoint? I hope so. I realize that the come-back from constituents are 10-20% of the students, publishers would say over our dead bodies, and I won't be surprised.

Go ahead.

>> MARIA PALLANTE: I will invoke my Chair hat for a moment. I don't think that it's helpful to accuse other members of the Commission that they are blowing smoke just because they have something that they would like to see reflected. I actually think if you read 16 it's pretty balanced in terms of what we're saying.

>> JIM FRUCHTERMAN: The publish he advocate the position is in the text of recommendation 16.

>> MARIA PALLANTE: I wrote 16 first of all and not the publishers. And if there is a specific productive comment that you have in the text, give it to me. But what I read to you as I started this session is what it says. What you are reacting to I believe is that the publishers have suggested in the recommendation itself, in the bold, that we add this proviso that on the other hand, it may serve as a disincentive for serious investment in a broader marketplace solution. But I don't see anywhere in this text where it doesn't weigh towards

here are all of the reasons that Congress should really be looking at this. So, I mean, we're having a discussion, so let's not attack each other, okay?

>> CHAIRWOMAN DIETRICH: I am curious about this disincentive. That's one of those things that theoretically everybody goes, oh, yeah, but that's sort of like how people will say everybody wants E-text. Well theoretically that may sound good, but if you actually look at the data, that's nowhere near true. And I actually decided that I should research this and see exactly how much of a disincentive it was. And as far as I could tell, Chafee was passed in 1996. So I went on to Balcors, and I looked at the book production in 1995 to see how much effect it had on book production in the United States. In 1995 there were 113 and a half thousand titles. And in 2010 there are over 3 million titles. Just between 2002 and 2010 there has been over -- over a 1,000% increase in book titles.

Now, I have a really hard time doing anything besides saying that's theoretically possible true, but I am not seeing it in the data. So I am going to ask do you have any concrete examples of it actually being a disincentive? Do you have a data of it being a disincentive?

>> MARIA PALLANTE: Before people answer that question, Gaeir, I want to get back to the context of the point of this recommendation.

The question is: Do people want Congress to look at Chafee with a view towards whether it needs to be updated or not? The fact that the publishers think that if it's updated to reflect a broader eligibility class could impact future investment is a legitimate point. It's not one that we need to get snide about or start attacking them about. It's a I will get mate perspective.

>> CHAIRWOMAN DIETRICH: I am truly not being snide. I am asking is it truly with data of relevant point.

>> MARIA PALLANTE: I would like to not go down that road

right now because I want to get back to whether people think Congress should be asked to update Chafee or look at Chafee because it may need updating. That's the question on the table, George.

>> GEORGE KERSCHER: Okay. So, yes.

>> MARIA PALLANTE: Thank you!

(Laughter)

>> GEORGE KERSCHER: 17 is something that I think we need to do. It goes to the fundamental heart of the issue. We mentioned earlier that other countries have this proviso that if it's available in an accessible form, then you would need to seek permission from the publisher to do it. And I think that we need to sort that through. But as the Chair of the market model, I think that that encourages more market consumption.

>> J. BRUCE HILDEBRAND: Say what you just said again, George, please.

>> GEORGE KERSCHER: Okay. I want to see 17 be a recommendation --

>> J. BRUCE HILDEBRAND: The NLS reg?

>> GEORGE KERSCHER: 16 is the Chafee?

>> MARIA PALLANTE: Yes.

>> GEORGE KERSCHER: Sorry.

>> MARIA PALLANTE: That's okay.

>> J. BRUCE HILDEBRAND: Okay.

>> GEORGE KERSCHER: And I think that the idea of not having -- if it's available in an accessible form from the publisher, then you can't use the exception. Now, if you are going to produce it in Braille, yeah, go for it. If EPUB is available and you need to produce Braille, sure, go ahead and use the exception. But if you are going to produce it, you know, equivalent to EPUB and make it available, I would see that the library serving persons with disabilities would want to license it rather than just like any other library would instead of having an exception to produce it.

Now, I'm willing to listen --

>> MARIA PALLANTE: Can you clarify that last point? The

library who is creating would be the licensor? That's where I start to have trouble.

>> GEORGE KERSCHER: Okay. So you cannot use the exception if an equivalent version is available.

>> MARIA PALLANTE: Right.

>> GEORGE KERSCHER: And if a library wanted to make that book available from their organization, they would do what any other normal library does, is license it from the publisher and make it available.

>> MARIA PALLANTE: License it from the publisher and not license it in the publisher's place to other people?

>> GEORGE KERSCHER: No, no, no, no, no.

>> MARIA PALLANTE: That's been floated before. What George described by way of background is actually one of the early incarnations of Chafee. It did not ultimately end up making it into the final Chafee Amendment. But in other words the exception works only to the extent that the commercial marketplace doesn't have that work out there. You can't invoke it unless there is no work out there on the marketplace.

The question is still, and we can work that into the guiding principles of Congress, and I think that's the third point. Congress should look at function. They should align the definitions. They should understand that there are definitions and other federal laws that complicate things. And then number 3 would be that, you know, one thing they should also look at is whether Chafee should only be able to be invoked to the extent that the commercial marketplace doesn't have the copy. The question is still scope. That's not something that we have to necessarily solve here, but we're still down to -- we still have to deal with eligibility class.

>> VICE CHAIRMAN WENDORF: In addition to the beneficiary class, but isn't it a matter of not just whether the book or the work exists in the marketplace, but whether it can be delivered in a timely way? And it may exist but can't be delivered and therefore the exception may be needed and used to remedy that situation. Is that fair to say?

>> MARIA PALLANTE: Yes.

>> ANDREW FRIEDMAN: Just be careful. You may be able to get there, and if it already exists it's technically in the marketplace.

>> MARIA PALLANTE: Bruce?

>> J. BRUCE HILDEBRAND: If there is a buyer, generally the market will deliver. So I think that that last point you might --

>> GEORGE KERSCHER: How many accessible websites and, you know --

>> J. BRUCE HILDEBRAND: Part of the discussion today is that, okay, you know, from Jim's perspective that Bookshare is making the search easier. One of Gaeir's points and ATN is here represented and we can see if this question comes up when their Federated Search will be available for free to anyone. So we are reaching a point. We go back to the key term which is scope, and our gratuitous remark about the publishers is that if the scope is broadened to the extent that very large segment of the population can be accommodated for free with materials that cost somebody to produce, then your direction will be not to produce those materials if you have to lose money on them. That's pretty logical where I come from. So just injecting those two points, I am going to back out and watch it roll.

But those are important.

>> MARIA PALLANTE: I will take that to a higher level for a moment. That's just the way copyright works. The broader the exceptions, the less valuable exclusive right. Though is not a new discussion in terms of copyright law.

George, the question that I have, than is one thing that's kind of in the back of my mind on your last point is we've decided that the market is all of these different players, right, and not just the publishers, but it's also the platform and the systems and all of that.

>> GEORGE KERSCHER: Yep.

>> MARIA PALLANTE: We're basically saying if that group of

people doesn't deliver, the publishers are the ones that lose, right? They're the ones for which the exception kicks in to their copyright. So that doesn't quite completely align. So I don't know that we can solve it.

>> GEORGE KERSCHER: Say that again.

>> TUCK TINSLEY: Say that again.

>> MARIA PALLANTE: We're talking about an exception, Chafee, exception to the exclusive rights of authors and publishers. And what we're floating is that if the marketplace does not deliver an accessible work, in a timely way, the exception will kick in. But it's not an exception on anyone other than the publishers. So they are the only ones ultimately giving something up in that -- even though they may not have complete control over whether the work is delivered or not. That's the best I can explain it at 3:30 in the afternoon.

>> VICE CHAIRMAN WENDORF: Wouldn't that make an incentive to publishers?

>> MARIA PALLANTE: Publishers are doing fine. They can't control it.

>> ANDREW FRIEDMAN: I will agree with you and Bruce on this the problem is that if the publishes produce an accessible product but the iPad is not accessible, or the Nook is not accessible, well, they've produced a product that's accessible, but the output or the device is not accessible. Now what's going to happen? You are now, you know --

>> CHAIRWOMAN DIETRICH: No, not under the way that the colleges are currently operating. We don't create things that are device dependent so if something is already available in an accessible format, we'll work with students on providing that format. But if they say I want to read it on my iPad and that's the only thing I am willing to use, that's not going to fly, if we can make it accessible for them in another way.

>> MARIA PALLANTE: Andrew and then Ashlee.

>> CHAIRWOMAN DIETRICH: And that's going right against what we just said.

>> MARIA PALLANTE: It is.

>> ANDREW FRIEDMAN: Because if the publishers creating an accessible product, but the device is not allowing it to be accessible and you have to do something else to the publisher file to make it accessible on another device, are you in this circular non-ending loop for the publishers.

>> MARIA PALLANTE: Ashlee?

>> ASHLEE KEPHART: I am kind of slightly thrown off. When I need an accessible copy of my books, and if the publisher is not able to provide it, I still have to buy the book first before I get the accessible copy. So I am slightly confused how we're saying they are losing money. You still have to buy the book. No matter how you get the accessible copy, it would be better you could get it straight from the publisher in addition to the book that you would have had, or you can do the trade-off by buying them from the publisher, but if you have to make your own, you still have to buy the book. So I am confused where the losing money comes in.

>> MARIA PALLANTE: Right. And what you are describing probably has nothing to do with Chafee. What you are describing is probably something happening under fair use which is a different issue altogether. Also what we're now talking about is if Chafee were changed so that it would only apply to the extent that the commercial marketplace wasn't providing an accessible work from the get-go, so you wouldn't need to buy the book and have it converted, and if that were the case, if that were not the case, somebody could step in a authorized entity, and convert the work. The question is, even though the publisher may not be the reason the work is not accessible, they are the ones that are having their exclusive right affected while Apple and others are not, even though it may be their fault. So that's the little kind of thing we're trying to solve.

George, does that help?

>> GEORGE KERSCHER: What I want to -- I can't be having 12 different reading systems that I have to use. You know, I've

got to have one or two that I can actually use. Now, I know I could buy it in one format and then use existing exceptions to the other one to hack it and read it myself. But let's not even go there. But I think that one of the assumptions we're making, if it's successfully entered into the market, then I should be able to get it in a reading system that is -- that works for me. Not just any old reading system that might provide some accessibility. It's got to be broad availability of this.

>> MARIA PALLANTE: I think everyone agrees on the goal. We're trying to figure out if that doesn't happen who bears the burden of --

>> JIM FRUCHTERMAN: And I think that the point are you making, George, argues the change that you proposed, which was if it's available -- one of the challenges libraries are facing today is that libraries can buy a commercial product but, oh, sorry, you only get to lend it, you know, 23 times and then it expires. I mean, a lot of these issues when you go into a licensing regime in many cases the libraries and the advocates lose the leverage that they have because, you know, I mean, same with computer software industry. What's your chance to re-negotiate a computer software license? So the only way that you can do it is if you aggregate market power which big University libraries have done in some cases. But, I don't know. I'm not convinced it's a great solution to ours. I want to go back to this issue where I think that when we started in this field we told the publishing industry that we weren't going to enlarge the franchise. That we were going to deal with 1 or 2% of the population is what we thought Chafee responded to, and that continues to be our effort. When people say Chafee should cover 10-20%, we're not in support of that because we don't think that it works with the exception, and we think that it undercuts the goal here. We're not trying to get kids that could buy kids free books. It's the problem of the bona fide disabled student who needs this accessible form, and that's what schools and authorized entities are trying to do.

And tons and tons, the great majority of cases the publishing industry is trying to help them to meet that I just want to kind of come back to the -- I think that the reason that there are market disincentives, actually the disabled community is "Collateral Damage" to much bigger issues going on in the business of electronic books.

People like Kindle wanting to lock people in. Amazon wanting to lock people in. Distribution. Fears of piracy. That's where all of the issues that are really coming about are coming from. It's not because groups like ours serving 140,000 disabled people, or NLS serving 6 or 8,000 people. That's actually not pushing the -- we're not pushing the publishing industry in anyone or other direction. We're on the sidelines basically being influenced by what's going on in the larger field which are major. We're trying not to get stepped on as a result of the changes that happen.

>> MARIA PALLANTE: Okay. So just coming back to recommendation 16 which is the congressional one, we keep ending up on beneficiary class. But I want to remind everybody that there are several prongs of Chafee that have come up in the last nine months, many -- all of which actually at one point or another have been suggested as being outdated. So that's the important one, the eligibility class. To be honest, if that were the only one, then the reg might make more sense. But it's because specialized format makes less sense, because some authorized entities might be empowered to do other things, because the right of reproduction and distribution, those two rights may not be enough for interactive works, for all of those reasons I think that my suggestion to the group would be that we keep this one in, that we do recommend Congress take a look at Chafee to see whether one or more of its prongs might need to be updated.

That we have some guiding principles in there. We do have the history already in here, including that Congress should be looking at function that other federal laws have desperate definitions, and then on the latest definition that George

raised about whether the Congress should consider Chafee only applying to the extent that the work is not already available on the mainstream market, I would say that we can include that at a high level, but we might need to give guidance explaining also that the publishers do not have complete control over whether it's accessible in the marketplace. I think to be fair we would have to say that because the publishers are the only ones with a copyrighted issue, and yet they don't control the accessibility. So I think that's where we are.

Bruce?

>> J. BRUCE HILDEBRAND: I asked Gaeir a question just a moment ago. A lot of the discussion is around different new devices. And I asked Gaeir, I said, "Is the vast majority" in fact I said more than 90% of students have access on or access to a computer. I don't know the sub-set of people with disabilities has changed much, but I wouldn't suspect so. Is the accessible material largely accessible on a computer? It may not be available on a Apple or Nook or Kindle or whatever else, but, yes, if it is accessible, and do you have computer, and more than 90% of students do, then it is accessible. I think that we're bogging down in all of the different devices that are coming out daily when the reality is that the computer works with accessible material and more than 90% of students have it.

>> VICE CHAIRMAN WENDORF: I would agree. I think that makes sense. And I agree with Jim that we're really talking about a very small percentage of students who need an exception in order to get access to the materials. It's 1%, maybe not much more. And our going on record asking Congress to clarify the beneficiary class, to make sure that there is consistency here, you know, in Chafee, with how these beneficiary classes are described in law elsewhere I think is just -- it's as much as saying, "Please ensure that the students who are now being served are legitimately being served."

I mean, that, to me, is what it's about. It's not about

enlarging the class, but more accurately defining the class of students in terms of their functioning who actually qualify for this exception. So it's not opening the floodgates. simply saying let's use the terms that actually are in law, and let's apply them here as they are used elsewhere.

>> TUCK TINSLEY: But, Jim, do we ask Congress to define that beneficiary class, or do we recommend to Congress a definition of the beneficiary class? Earlier I think Maria had asked that George, you, and Jim get together and come up with a definition to present to the Commission. But that's key. It's obvious that in 1931 when they were talking books for the blind, years later Chafee went back to that because it knew what it was. It didn't want to get out of hand. It's slowly eroded to a population that's a bona fide population that needs it. But I think that this Commission needs to identify that population.

Now, when George was dealing with the Chafee years ago as a large group of people were, RFB was RFB. And RFB&D then we added dyslexia to it. Ritchie was President when the change was made, and he told me at the time that the change was made because of the population RFB was serving, 20% were blind. That 20% was about 80% of the blind population that needed their services. 80% were "dyslexic." That 80% represented 10-15% of that population.

So there is some fear as you move into that. But as experience has shown, it's not going to be that big a population. We need to nail down the wording so that the publishers are not concerned that it's going to be 20% of the population. So your direction could be followed, Maria, as far as them getting together it would be great to entertain that tomorrow before you leave.

>> CHAIRWOMAN DIETRICH: I would ask if Betsey could be part of that discussion because I think that it's really sort of silly for us to keep coming up with different definitions when the ADA, ADAAA now what are you calling it?

>> BETSEY WIEGMAN: It's still the ADA. The ADA Amendments Act just modified the existing ADA. Now the whole thing is the

ADA.

>> CHAIRWOMAN DIETRICH: I think in the spirit of looking at WIPO and some of these other issues of harmonizing all of these definitions, it would be of benefit to all of us to have those harmonized.

>> GLINDA HILL: I would like to participate, too, because I have worked on the WIPO group as well. I worked on those definitions that Jim read.

>> MARIA PALLANTE: Bruce, do you want to be part of it, too?

>> J. BRUCE HILDEBRAND: Yes.

>> MARIA PALLANTE: Just to be clear --

>> VICE CHAIRMAN WENDORF: We want Bruce part of that

>> MARIA PALLANTE: I think I heard a different standard I don't think that the goal is to come up with a definition that harmonizes disability laws. I think that the goal is to come up with a definition of learning disabilities that could work for purposes of copyright. So those are the marching orders.

>> J. BRUCE HILDEBRAND: And if we get into this discussion as we can in like severity and things like that, we can't put our arms around it. We're getting broader and broader terms.

>> VICE CHAIRMAN WENDORF: I bet we can come up with language that's functional.

>> MARIA PALLANTE: I bet we can do it. Let's come up with something, and whatever it is it's starting point for Congress. They will have their own hearings. You will all have a chance to be part of that. Everyone here is a stakeholder. There won't be a giant national discussion about the Chafee Amendment without everybody in this room being part of that, and it will take a long time.

>> TUCK TINSLEY: Maria, I think that the great benefit in that, because that has continued IDEA in 2004, the creation of NIMAC. They were still dealing with that perhaps way back then so this continues to roll forward. Any clarification that we can provide to that to the bona fide disabled student would be very, very helpful.

>> MARIA PALLANTE: Fabulous!

Mark?

>> MARK RICCOBONO: I think that this is great outcome. I just want to also add that I want to make sure that the ultimate is that we tell Congress that Chafee does have an important role, or we affirm that. And also affirm that although we trust in the market model, there still is a group of materials for which we need to create specialized formats, and that's a very important thing to leave into the law. We don't want Congress to decide that they want to throw everything out.

>> MARIA PALLANTE: Yes. And I think that's a theme that has been repeated from day one.

>> J. BRUCE HILDEBRAND: Here, here!

>> MARIA PALLANTE: Okay. So Gaeir?

>> CHAIRWOMAN DIETRICH: So the other issue that is of importance to the colleges is whether we can be considered authorized entities.

>> MARIA PALLANTE: Yes. So I think where we are, thank you, is that we are recommending that Congress review the Chafee Amendment, Section 121 of the Copyright Act, to see if it needs to be updated in one or more ways. On the question of eligibility, we're going to try to put forth a Commission definition as starting point. However, the other issues that have been discussed for the last nine months are still going to be included in our recommendation as factors to be considered. They're in the text now in the legal recommendation. They include the criteria and roles of authorized entities, the nature of specialized formats. We also talked about the copyright rights at issue. Right now that's reproduction and distribution. So our recommendation to Congress is really if are you going to look at it look at all of it.

Anybody want to confirm what I said?

>> ANDREW FRIEDMAN: The only thing I will say to be careful is don't forget Chafee covers more than college. You just need to be careful.

>> MARIA PALLANTE: It does.

>> ANDREW FRIEDMAN: We're kind of outstepping our charter here a little bit because it's a broader application. So whatever we recommend we have to make sure that we're not screwing somebody else up somewhere along the line here.

>> MARIA PALLANTE: Yes. That's true. However, it is in our congressional mandate as a Commission. So I think that we have cover on that.

>> ANDREW FRIEDMAN: Okay.

>> MARIA PALLANTE: Are we good?

>> CHAIRWOMAN DIETRICH: We need take a five-minute break, and then we'll come back and continue discussion.

(Break)

>> CHAIRWOMAN DIETRICH: Before we get started with this next section, I want to remind everyone who would like to go with us to dinner please talk to Liz in the back and make sure she has your name for the reservation. And, again, we'll be meeting down in the lobby of the hotel at 6:30 for anybody who wants to walk over or we'll be figuring out grabbing cabs for those who would like to have a ride over there.

Okay. Now, I would like to come back and turn it over to my vice chair Jim Wendorf.

>> VICE CHAIRMAN WENDORF: Okay, folks. We're starting up the homestretch for today. We're going to go back to Maria, and I think that the -- while we resolved or at least found a way to resolve the recommendation 16, I think 17 is still on the table and probably needs to be discussed again. So we're going to do that first. And then if there is sufficient time Gaeir had asked that we also bring up the issue of licensing if there is time.

Maria, over to you.

>> MARIA PALLANTE: Licensing, and then I had a request from Mark as well to revisit the rebuttable presumption, safe harbor market incentive one as well.

Bruce is not here? Okay. Well, back to 17, and the NLS reg. This came from Jim Fruchterman. There was lots of interest in

it and support generally for the impetus. The question really, and this is coming from both the publishers and NFB at this point is does it take away from the recommendation that Congress look at Chafee? And if it does, should it be in the report? So, Mark, I will ask you to speak first.

>> MARK: Well, that's just the question that I have, and maybe I don't fully understand 17, but I think that the discussion that we just had on Chafee is great, and I understand why 17 comes about. I just wonder if it will cause more confusion than help in the end.

>> MARIA PALLANTE: Jim, do you want to respond?

>> JIM FRUCHTERMAN: I offered up 17 as what we technically call a parsimonious solution, sorry, the nerd shows up on more than one occasion here. And this is not -- if the Commission is interested in revisiting all of Chafee, I think that the 17 as a recommendation kind of goes away. I think that the issues that 17 is talking about needs to be in a combined thing. I think that we should identify the four or five issues that we've talked about and make sure that's in the body of 16. I want a more neutral title for the body text.

>> MARK RICCOBONO: I agree with what Jim said.

>> MARIA PALLANTE: We will neutralize the 16 recommendation based on the parsimonious from Jim, and we'll fold it into the analysis -- we will fold 17 into the analysis of 16. Everyone okay with that? Okay.

We have left -- what's so funny?

>> GLINDA HILL: Jim sounds like an attorney now.

(Laughter)

>> MARIA PALLANTE: And your point?

(Laughter)

>> GLINDA HILL: We're all going to sound like attorneys.

(Laughter)

Okay. I'm trying to find, Skip, the recommendation about safe harbors and presumption, rebuttable presumption. 14? Thank you. Who just did that, Betsey, it was you?

>> VICE CHAIRMAN WENDORF: Page 18.

>> MARIA PALLANTE: Aha! So this one came from a good place. This is one of the few carrots that the legal task force put forward meaning that it wasn't, you know, everybody has to do this or. It was more that there should be incentives built in to really, you know, get people to do the right thing, and to reward good-faith actors so that, for example, among publishers, if they do the right thing they don't have to worry that other publishers aren't playing by the rules and outcompeting them in the marketplace. So I will read it. "Congress should encourage everyone in the ecosystem including postsecondary institutions, publishers, and other content providers, manufacturers of hardware and software, by offering market supply incentives including tax incentives, safe harbors, or legal presumptions with respect to the production, sale, and purchase of accessible instructional materials and devices."

The trouble that we got into pointed out to us by the Department of Ed is that there can't really be a safe harbor with respect to civil rights. You can't mitigate the cause of action with respect to civil rights. And that obviously makes a lot of sense. So we can't say that if there is a standards board, for example, and everyone is following the standards and the publishers are publishing according to the standards and the university has trained its faculty beautifully and they are only purchasing and assigning accessible materials and the students themselves say I'm only going to purchase, you know, accessible materials, and it's all working beautifully, you can't say to a student, you know, if you sue under your civil rights you will be limited in your remedy because the publisher or the content provider or the hardware device manufacturer will be able to say that they have de facto met the standards. You can't mix apples and oranges that way. So the question then is do we take out the references here to safe harbors with respect to ADA, which sounds like we have to.

(Laughter)

Just from the Department of Ed's point of view and it makes

sense to me. Is there anything left in this that we should leave in here because, you know, in general, incentives are a good thing, and they do meet that kind of collaboration proviso that's in our charge. So I could go through the rest of it here just briefly. It's -- well, I told you, tax incentives, rebuttable presumptions for publishers and content producers that if they follow the standards board they get some presumption of accessibility. Maybe there is a Good Housekeeping Seal, stuff like that. Thoughts? Gaeir?

>> CHAIRWOMAN DIETRICH: Well, except for the fact of taking out the ADA part, just getting rid of it which I think you can do easily by just scratching out the postsecondary institutions, I like the idea of incentives. I mean, especially -- it's not hard to build in accessibility from the ground up. But when you are dealing with any sort of legacy system, and that's not just with digital books, but as has been raised if the platform on which the digital book is being rendered also is inaccessible, then there needs to be some ability to go in and have people have some incentive for working together. I would like it see part of that collaboration being not just the publishers but also the software producers, the hardware producers. I think that we've addressed that elsewhere.

But those people, and the people, and I know is in the tech task force, but the people who actually develop the material -- or rather develop the software for doing production, if they can also be included so that it makes this really sort of a seamless sort of thing. And if tax incentives will do that, go tax incentives!

>> MARIA PALLANTE: Anyone else?

>> BETSEY WIEGMAN: I wanted to weigh in and say we've discussed this the ADA portion before, but I agree with what you said. We can't mitigate civil rights. Even where such a presumption, you know, finally implemented, that OCR would still be obligated to investigate any complaints we got of a civil rights' violation.

>> MARIA PALLANTE: Right. Okay. So I don't know that we need to provide a whole lot of specific information here. If we have very specific recommendations for incentives other than tax incentives, we should include them. Right now we're left with tax incentives and some kind of presumption that if the standards board set standards and the publishers meet them, that they would be able to basically market their materials as having met the standards of the board. What that gets you is kind of, you know, you get good corporate citizenship I think is what you get. This is for the publishers.

Well, tax incentives for the for-profit publishers.

>> VICE CHAIRMAN WENDORF: Good point about not-for-profits not being helped --

>> J. BRUCE HILDEBRAND: No, we want all of the money.

(Laughter)

>> VICE CHAIRMAN WENDORF: We call it surplus. But there are ways, and it actually came into play, you know, with the stimulus funding and everything else.

>> MARIA PALLANTE: And it's all gone now.

>> VICE CHAIRMAN WENDORF: Well, that not-for-profits for example on healthcare benefits and things like that. So there are ways that not-for-profits can benefit from some of these things without it being tied to tax. Especially benefits, payroll tax.

>> CHAIRWOMAN DIETRICH: I think that there is another one here and I need to double-check with my resident techies, but is it not the case if you have alt-tags on your graphics you will get a higher hit on Google? That used to be the case. I know five years ago that was definitely the case. I'm not sure if it still is. But there may be some things like that, that we can at least point out to people. I don't think that it's widely known because Google can't search a picture. It can only search text. So that's one of those hidden benefits. So there may be something like that. There may be collaboration of education where possibly they could come and learn more about accessibility, certainly that would be a wonderful

partnership with AHEAD. I think there could be other creative incentives here that are possible.

>> LINDA TESSLER: May I quote the psychology text?

>> MARIA PALLANTE: Yes.

>> LINDA TESSLER: Positive reinforcement is the only thing that changes behavior. Negative reinforcement doesn't really work as we can see in the penal institutions. Having said that there is a quirk in reinforcement. If the reinforcement is monetary in nature, you diminish the behavior. You don't raise the morale, you don't teach morality, it's just how the stats would read as strangely enough as it is. Was I clear or confusing?

>> MARIA PALLANTE: I think that you were confirming that positive reinforcement and incentives is a good thing that we should recommend, but that for the publishers if it's only monetary it's not going to be life changing enough for them.

>> LINDA TESSLER: Right. I don't know if tax incentives is really an answer. I don't know. I am just quoting.

>> MARIA PALLANTE: Thank you. Jim?

>> TUCK TINSLEY: And you confirmed you have never worked on Wall Street also.

>> LINDA TESSLER: No, I can answer that. You are talking about being a good citizen, Tuck.

>> TUCK TINSLEY: I was considering. Some Wall Streeters Are good citizens.

>> LINDA TESSLER: Sometime. I don't want to overgeneralize.

>> MARIA PALLANTE: Jim, then George, then Mark, and we're talking about rewarding good behavior.

>> VICE CHAIRMAN WENDORF: To Linda's point, and this was mentioned earlier, Good Housekeeping Seal of approval, that sort of thing, those things do exist in the not-for-profit space. For example, the Better Business Bureau has the wise giving alliance, and if you jump through hoops and meet all standards, charitable standards as many of us want, you know, desperately to do, you are eligible to join the wise giving

alliance, and literally put a seal from the Better Business Bureau on your websites and solicitations and everything else.

And it's, you know, organizations find it meaningful. Could there be something like that? Could we suggest even that the Access Board, you know, actually generate such a -- if publishers or works are meeting those standards, could that be conferred in some way?

>> LINDA TESSLER: An easy example you can see when you see parenting techniques. Parents that give children monetary incentives don't create the kind of moral development they really want. It's just true guys.

>> MARIA PALLANTE: Thank you. George?

>> GEORGE KERSCHER: So is this on? So some kind of marketing advantage might be helpful.

>> MARIA PALLANTE: Right. Same point.

>> VICE CHAIRMAN WENDORF: Yeah.

>> GEORGE KERSCHER: That would be very helpful. And good for everybody.

>> MARIA PALLANTE: Right. Exactly. It will help purchasers as well.

Mark, I believe that you were next.

>> MARK RICCOBONO: I am not sure how I would define what the incentives would be, but I guess I see this more as a balance against the concern that the things we're talking about and the recommendations that we've already had will stifle innovation. I think that a lot of us in the room don't think that is true, but I think if anything this helps to balance that concern. I would actually see this as an accelerator to innovation more than an attempt to sort of create the good behavior. I would see this as something that is going to help really just create that extra push to get news that direction.

>> MARIA PALLANTE: Thank you. Any thoughts to the contrary? Any reason not to include this recommendation?

I think we're good. So now we have licensing, Gaeir?

>> CHAIRWOMAN DIETRICH: This is not a thought to the contrary, but I just suddenly thought although there is no more

stimulus money, but stimulus money to encourage -- I mean, there may be some day to encourage accessibility. I mean, that would certainly be appropriate.

>> MARIA PALLANTE: I think we're done with this one. And I believe the other issue that Gaeir you wanted to raise was licensing. So Skip which one? Recommendation 3. And I will just tee it up, and, Gaeir, I didn't know if you had a specific question about it. But Recommendation 3 on Page 5 says with respect to non-digital print materials, legacy materials and materials coming out in print still. Rights holders, universities, and intermediaries, those are authorized entities or their DSS offices for example, should explore whether innovative, voluntary, collecting licensing models would allow for timely production, distribution, and/or exchange of instructional materials in circumstances where the relevant rights holders, and those are the copyright owners, do not have all of the necessary rights themselves or the sufficient systems in place for direct licensing. For example, a publisher does not own the rights to the artwork or the graphics or some of the articles that are in a book, therefore, they would not be in a position to license those. Did you have something specific you wanted to tee up, Gaeir on that?

>> CHAIRWOMAN DIETRICH: I was just trying to understand this. And what you just said there at the end, the example that you gave, that actually helps me a lot. Because what I was trying to imagine is, okay, you know, my student walks into my office with a book. They want it by tomorrow. How is a voluntary licensing scheme going to help me with that? That was the part I didn't understand. Now, obviously Actress Tech network is in essence a voluntary licensing scheme because publishers have banded together and say we'll provide you with the electronic text, and you have the license then to re-create that, or rather to re-purpose that in a format that works for your students. So that's one example of it.

>> MARIA PALLANTE: So to tee this up a little bit more and

drawing on that, so we're talking about non-digital print materials in this context. And the question is: How would collective licenses work? And remember when the CCC came to Jacksonville and did a demo for us, they would do any number of things, and it doesn't have to be them. It could be the Access Texts, It could be Bookshare, it could be some organization that we've never heard of, but some entity which is in a position to both aggregate the rights in one place so that are you not going from rights holder to rights holder to rights holder, and who also is in a position to have files of actual copyrighted works in their control would form some kind of collective licensing in which publishers and authors and others in advance would enter into this kind of blanket license to allow things to happen without you having to go back to them each step along the way.

Generally that's how collective licensing works.

So that license may be a license between AAP, or members of AAP, and particular universities at the source where no intermediary is even necessary. For electronic works that would be easy. They could just say Ashlee needs a work, you have permission to give Ashlee the work. You don't even have to come back to me. For non-digital work somebody in between has to have the file in the form that the student needs it in. So you are probably going to have a license that has somebody in the middle. And the reason that the license comes into play at all is because what we're talking about would go beyond Chafee. It might be that it's a derivative work, it might be being licensed to someone not currently in the beneficiary class of Chafee. But the point is where Chafee stops and where the open marketplace starts there a gap, and collective licensing is one way of getting there.

I believe that when we left this topic last we were talking about having some kind of model pilot projects around collective licensing because they really don't exist ever in the form that you want them in. They are always this kind of creative project that stakeholders put together. And they are

very fact specific.

>> CHAIRWOMAN DIETRICH: Well, we essentially have that model with the ATN.

>> J. BRUCE HILDEBRAND: Well, no, it's not a license, per se. It's that you have agreed to terms and conditions under Chafee or in this case they extend it a little bit further. It doesn't go by the strict adherence of it. But what you are allowing is the University of Texas to take a file and then it goes through ATN, and it gets QC, quality control checked, and then you can do all the Federated Search you want whoever you are. But once you start utilizing the services, there is some fee attached to them. But that is not a license. That's an agreement, a contractual relationship. I have Christopher and Rick and Joe sitting out there. Am I perfectly correct on that, Joe -- or Christopher? Yeah, his head is shaking. It's not a formal license in the fact that she is talking about. CCC ironically was created by AAP as a means of licensing --

>> MARIA PALLANTE: Photocopies.

>> J. BRUCE HILDEBRAND: -- photocopies and course backs, and it's expanded from that. But that is an agreement between the two parties. What she is talking about is a group license so that you can do them en masse with some rules that would be pre-agreed to by the licensing and licensor.

>> MARIA PALLANTE: And it's connected to Federated Search. And the model we have in the U.S. where we've most developed collective license is music. Tonight when we go to dinner, look for the symbol that says ACAP or BMI, and that means if they are playing music in that restaurant or bar, they have licensed it at the source. And they don't know what somebody is going to -- let's say there is a band playing. They have no idea what somebody in the audience is going to say to that band like "You could play my favorite song X, Y, time," you don't want the band to say no wait a minute I didn't clear it in advance because I didn't know you were going to ask for that song, they clear it up front so there a lot of flexibility. That's the issue.

>> JIM FRUCHTERMAN: This is solving a problem that publishers have around the rights they do and do not have in the books that they publish because they negotiate rights for photographs or excerpts that are narrow to the print. And one thing that I think people probably forget is that Chafee actually has a special provision that publishers, it's not a violation of copyright for publishers to include in the NIMAC pictures that they had in the original file. So I think that this is a different solution to the same problem of publishers don't always have the rights necessary to do this, but if there is a collecting licensing thing in place they could say, well, the money will show up to the right people unless they opted out or something like that.

>> MARIA PALLANTE: Exactly right.

>> CHAIRWOMAN DIETRICH: So I am a bit vague about how this would be implemented. So, Bruce, would the people who are -- I should say the publishers who are ATN members, would this be of advantage to them?

>> J. BRUCE HILDEBRAND: It can be. And I am sure that if it evolves that they will be lots of lawyering on all sides because as she said, and as the head of CCC who came and met with us, these license agreements are highly structured and there is not exactly -- I don't know any two alike because it gives you territories, times, content, price, delivery method. They are very unique. As she said, they are creative works almost. So the discussion is around how can you come up with a standard, even a template, that would probably in most instances enable smaller publishers, and at least 6,000 other organizations to get into this, because the larger publishers already have the resources to do this on their own by and large.

>> CHAIRWOMAN DIETRICH: So that makes sense as sort of a standard template of, you know, then you can just pick from column "A" and one from column "B."

My other question is can't do you this now? How would this be different from what you can do now?

>> MARIA PALLANTE: This is not one of the legislative recommendations this is one of the market best practices recommendations that came out of legal. So we're saying that the Commission should recommend to the players in the ecosystem that they create collective licensing.

>> CHAIRWOMAN DIETRICH: Encouraging them to do it.

>> MARIA PALLANTE: There is a voluntary side to this. There is a safety net side of this which says if the marketplace doesn't work we're saying that Congress should look at everything in it's power to compel the marketplace and then we would flip to possibly looking at compulsory collective licensing in which you have no choice but to enter into a license.

>> CHAIRWOMAN DIETRICH: Okay. Thank you. Because from the beginning this has just been so confusing to me, I didn't understand why this was different from what we had but essentially it would be encourage the it would be a template, and a roadmap.

>> MARIA PALLANTE: And it's for people who are in good faith collecting files for which the slaw a little unclear and distributing them to the people that need them. It is sanctioning that at high level across the board without putting too much burden on them.

>> CHAIRWOMAN DIETRICH: Okay. Thank you. We should ask if anybody else has any questions on the voluntary licensing model. George, you look perplexed.

>> GEORGE KERSCHER: I am confused.

>> CHAIRWOMAN DIETRICH: Thank you, George. I was feeling isolated in my confusion.

>> GEORGE KERSCHER: So the idea here is to encourage the upgrade of that print into move into the digital marketplace.

>> J. BRUCE HILDEBRAND: No.

>> MARIA PALLANTE: Let him finish.

>> J. BRUCE HILDEBRAND: Unless you are licensing to do that, George. What you are say something they would create a digital work from a printed work?

>> MARIA PALLANTE: No, he is right, Bruce. The goal is to -
- I will read it the way we've written it here. It's to allow
the university to -- or the university's agent like a Bookshare
or a DSS office -- to convert non-digital legacy materials or
materials that are not student-ready on a as-need basis.

>> J. BRUCE HILDEBRAND: All right.

>> MARIA PALLANTE: Go ahead, George.

>> GEORGE KERSCHER: Okay. So this creates the digital
product, and then some way to get a license in order to sell it
through Barnes & Noble and --

>> MARIA PALLANTE: No.

>> GEORGE KERSCHER: -- all of the other places?

>> MARIA PALLANTE: Well, you could enter into a broad
license to allow them to do that, or you could license it back
to the publisher at that point. Those terms would all have to
be negotiated. But you have to assume that what we are talking
about here would be something that you can't do under current
law.

>> GEORGE KERSCHER: Correct. You would need this license in
order to do anything other than give it to qualified student.

>> MARIA PALLANTE: Yeah. But honestly, you need it so that
intermediaries, authorized entities, DSS offices, et cetera,
can share easily, can collect and upgrade and migrate files and
do whatever they need to do without worrying about whether it
meets the components of Chafee or fair use.

>> GEORGE KERSCHER: Oh, okay. And so right now --

>> MARIA PALLANTE: And it's not just publishers, but it
could be materials not covered by Chafee, right? Interactive
materials, digital, videos, other kinds of things that are not
even in Chafee right now.

>> GEORGE KERSCHER: Right. So right now does RFB&D and
Bookshare have the right to exchange material?

>> ANDREW FRIEDMAN: This isn't related to that. So all this
is trying to do is say if there are print materials that
currently exist that are not accessible, make those rights
easier to clear so when you do create a product you can make it

accessible. And if there is a broader market for it, license rights are created and publishers get their money, and you have to charge for them or not. I guess you could create a free license that nobody is generating anything off of. Not likely, but you could.

>> J. BRUCE HILDEBRAND: George, what it comes down to, okay, publisher "A" has a textbook, and RFB&D thinks that they through their members or Bookshare can create a market to monetize for making it accessible. They would cut a deal with the publisher, give us the right to do "X," to convert this and sell it this way in this market that would be defined, like in the United States, or globally, or whatever. And what they are betting is that they can pay them -- they can cover their cost, pay a royalty, and generate enough revenue to cover both. It's that simple.

>> GEORGE KERSCHER: Right.

>> MARIA PALLANTE: I don't think there is one way to do a collective licensing scheme. There could be several. It's always better to have more than one. I mean, in the music space we have three. In textbooks we have CCC and that's it right now. But this is related I would say to the -- to upgrading the role of authorized entities, and the powers that they have. They could play many more roles.

>> JIM FRUCHTERMAN: And, George, just to go further, more and more, especially small-and-medium-sized publishers are asking for their content back from us in XML format so they can start selling them. But realize that the number of publishers that we can engage directly because the high transaction cost, and I think Betsy said we have 130 publishers signed up for work. They happen to be focused on big publishers or university publishers. So essentially any book we got and they say we could use it for this broader need, and you start doing image description for this other interactive media because we have demand, all right, great. We have safe harbor. We could pay a royalty. We could sell that and publishers or authors, whatever the scheme is, will benefit from that.

The idea is to continue to broaden the scope of this in a way that encourages a market kind of solution where the publishers get royalties for things that we don't think Chafee covers, and yet could generate revenues both as Bruce outlines to help cover the cost of doing the accessibility work but also the publisher starts getting money. And I think it's generally a favorable direction to go in.

>> ANDREW FRIEDMAN: It also opens up innovation, right? Because if we've got resources that the smaller publishers don't, and we can invest in technology that they can't, but we can now produce product, it's a way to open up the market.

>> MARIA PALLANTE: So also for low-incidence high-cost works that a few students may want to take advanced Chinese, but there is never going to be a huge market for that, that's the kind of thing that publishers would want to license directly with the universities. The universities would deal with their agent, Bookshare, Access Text, whoever it is, CCC, and it would just happen -- it would be streamlined. Because the terms have already been negotiated.

>> GEORGE KERSCHER: I see.

>> MARIA PALLANTE: Does that help?

>> J. BRUCE HILDEBRAND: Think streamline. She hit the keyword there, George.

>> GEORGE KERSCHER: Streamline. Yeah.

>> CHAIRWOMAN DIETRICH: I have another question. So would this then -- would the campuses be required then to pay a license **feeing** to do what we're already doing? That's my concern.

>> MARIA PALLANTE: It's a license. So it's about sanctioning what you can't do under law currently. So if it isn't fair use and it doesn't fall within Chafee, it requires a license. And rather than have lots of direct licenses which would overwhelm and does overwhelm DSS offices, universities, and authorized entities, the terms are negotiated at a very high level and you sign up for it.

>> STEPHAN HAMLIN-SMITH: I think I can help to clarify this.

In practical terms, to the extent largely that work that a disability resource office does now very often that work is conducted under a fair use umbrella, and so an issue of licensing in those instances isn't a necessary consideration.

However, if an institution wanted to do something, or needed to do something that was not considered fair use, and was also not covered by a Chafee exception, then in that instance this would be a way that an institution could purchase a license to do what they want to do that doesn't fit under one of those existing legal frameworks to do it in. So that's my understanding.

>> J. BRUCE HILDEBRAND: Give an example, Stephan.

>> ANDREW FRIEDMAN: So you want me to take it?

>> STEPHAN HAMLIN-SMITH: Yes, please Andrew.

(Laughter)

>> ANDREW FRIEDMAN: So let's say professors, you have a book for lack of a better word that is only used in a very small population, and you produce a Chinese Braille something or other that, you know, can only be used by 15 people and you happen to have them in your school and only one of them fits under fair use, but you want to give it to the other 14, this would cover you.

>> J. BRUCE HILDEBRAND: Yeah. Using the Chinese example --

(Laughter)

-- believe it or not, they are finding that a lot of dyslexics that they are testing now, the dyslexic students can learn and write better in Chinese. You may know that. So where they cannot write in English, they can write as clear as a bell in Chinese. And it's a learning tool. So let's say that you wanted to include not only your dyslexic students but unqualified students who are in a Chinese segment, so are you doing it for one but you want to use it for 21, now you've got to get a license or you've got to pay somebody either the publisher or a RFB&D to produce it.

>> MARIA PALLANTE: That was a great way to describe it. Forget who are you allowed to serve under Chafee and fair use,

and go back to the discussion that we started the day with of all of the other people that could benefit once the work exists, we have to license that portion of it. So once it exists, why not share it -- why not share it?

>> CHAIRWOMAN DIETRICH: I understand that. And we're doing some of that in our system where we've gone out and gotten licenses to actually create some of our books in a particular format that then is used in basic skills classes with just people in general. Some of them have disabilities, some of them don't have disabilities, that doesn't matter because they have agreed to a license. So that part I get.

What concerns me is whether because you never know, you know, when something gets floated out there in the greater world and into Congress whether there is anything about this that could actually have a negative impact on the campuses' ability to do what we're currently doing, which is that the student buys the book, and we either get then the E-text from the publisher for that student, or we scan it and run OCR on it. And it's one book per student, every student who needs it buys the book. Is that what you are saying?

>> MARIA PALLANTE: Let me answer it this way Gaeir because now we're going down a subjective road. Some of what you are describing sometimes will be fair use and sometimes it will not be fair use and isn't currently fair use. And we can't get into whether every particular instance on every campus is okay. So we're dodging that, right? If it is fair use, you can keep doing it. If it's not, it's not for to us say. That's between the rights holders and the school.

What we are saying is that if it isn't something that can be done under current law, this will bridge where the market actually is, where the exceptions and limitations leave off, and get students what they need in sanctioned way. And with some certainty. I think that's the goal.

>> J. BRUCE HILDEBRAND: It's not going to bite you, Gaeir.

>> CHAIRWOMAN DIETRICH: Okay.

(Laughter)

That sound is the one I am worried about.

(Laughter)

>> GEORGE KERSCHER: How is this different from what Google wants to do?

>> MARIA PALLANTE: I feel like I get that question no matter what we're talking about.

(Laughter)

I get that question once a day.

(Laughter)

So the question is how is this different than what Google wants to do? The difference is that Google -- are you talking about their lawsuit? Are you talking about the book settlement? Because the answer there is they wanted to do it just for Google. This would have the same kind of structure for everyone. That's the general idea. But it is a collective licensing scheme that they were creating in that settlement. Just a private one.

>> CHAIRWOMAN DIETRICH: I would feel more comfortable if there was actual language in there that there is nothing about this that is meant to interfere with the campus' ability to provide for formats for their students in a timely way. Because my concern about this is if there is sort of something that becomes set in stone that says you have to go out and get a license, that will slow us down. That's my only concern.

>> MARIA PALLANTE: Maybe it's too late in the day for this conversation, but I think that it's an important conversation. What I'm hearing is an assumption that if you have two federal laws clashing, that you get to pick one. The whole reason that we're here is that we have federal laws clashing. And we're trying to work through that. So, no, I'm never going to agree that just because you have to get the student their work under Law 1 that you get to break Law 2. No.

>> CHAIRWOMAN DIETRICH: What is law 2 that we would be breaking?

>> MARIA PALLANTE: Copyright.

>> CHAIRWOMAN DIETRICH: So if the student owns the book,

we're not entitled to create that for the student?

>> MARIA PALLANTE: I am saying that fair use is a very fact specific limitation that has to be applied on a case-by-case basis for every work, every student, every circumstance. That's how it works. You can't extrapolate that because it's fair use at a community college under one circumstance in California means that it's fair use across the board. That's not really a productive conversation. What we're saying is that if it doesn't work under current law, it may or may not be fair use, a licensing scheme could really be helpful. You don't have to do it. You can claim fair use if you prefer. You don't have to go through licensing scheme.

>> JIM FRUCHTERMAN: You might make Gaeir feel better if rather than phrasing it in the way that I think you find actually difficult to say, in addition to other methods by which student needs are served, this might also be helpful so that it's not so clear that this is an exception -- this is a substitution for the existing structures.

>> MARIA PALLANTE: No, no, no.

>> JIM FRUCHTERMAN: That might solve the problem without trying to create a blanket safe harbor thing which we understand is problematic for something like civil rights or fair use.

>> MARIA PALLANTE: So if something is actually fair use, this would not negate that it's still fair use. I feel compelled to say one other thing, which is that also in the legal recommendations, and this has come up several times, and NFB's counsel is the one that really opened my eyes to this, there is some feeling that as technology progresses it is going to be more and more difficult, if it isn't already, for DSS offices to actually meet the reasonable accommodation standards under the ADA.

>> CHAIRWOMAN DIETRICH: Absolutely.

>> MARIA PALLANTE: So all of this discussion about whether it's fair use to scan a work and do OCR to get around copyright law may be pointless if you are not reaching the standards of

the ADA to begin with. And that's another reason why a collective licensing scheme begins to make sense because then you actually get the format and the standards that you need in technology.

>> CHAIRWOMAN DIETRICH: And as long as that can be done in a timely way, that's fine. That's my concern is I know -- I mean, I just looked it up on Balcor. There are 3 million titles in print today. Probably more today. That was 2010. And of those, I doubt that all of them are going to be licensed proactively. So I am still going to have students walking into my office saying I need this tomorrow. And at that point, you know, they bought the book. I mean, would it be possible then to put safe harbor in for the colleges if the student has purchased the book and we agree not to, you know, share that with a student who has not purchased the book, then can we have a safe harbor?

>> MARIA PALLANTE: I'm lost.

>> CHAIRWOMAN DIETRICH: Ashlee is not lost. Ashlee, would you like to comment on that?

>> ASHLEE KEPHART: If a student buys the book and an alternative format of that book is made and it's only going to be shared with other students who have purchased that book as well, wouldn't that still work?

>> MARIA PALLANTE: Right. So what a license would allow is for rather than -- let's start with a work that is complicated and a DSS office that is overburdened, and a student that needs something advanced. What we're trying to solve is where all of these pieces kind of fall short a little bit. So there would be a license at the source between the publishers and the university where whatever a student needs they can go somewhere, probably to the university library maybe to the DSS office. It kind of depends on the university, and they can do whatever they need to do. But the first thing that they might do is check with a library that specializes in these kinds of works, that has been licensed by the rights holders. Let's say that it's Bookshare. And you wouldn't have to do any of the

things that you have been doing because the work in perfect form for Ashlee exists and can be shared. And if it doesn't exist, it can be created without worry about liability.

>> CHAIRWOMAN DIETRICH: Right. I get that. And that's who knows how far off if ever, but it seems like if we're looking at what would actually be a safe harbor for the colleges, a safe harbor would be the student has purchased the book, and the campus is -- and I'm talking just legacy materials here and not digital -- then the campus would be able to create an alternate format for that book, and give it to the student and they sign documentation agreeing not to share that material. Would it be possible for us in this legal section, not necessarily here, but somewhere in all of these recommendations to have that kind of a safe harbor for the colleges.

>> MARIA PALLANTE: I'm sorry, I now understand that you are not talking about the licensing recommendation anymore. Are you talking about something completely different.

>> CHAIRWOMAN DIETRICH: Right. Because that's my concern if people sort of grab on to this licensing idea, it's going to then have a negative impact because they're going to say, oh, well, it's completely covered by the license, where as we know there are 3 million titles out there. I really doubt all of those are going to come under the licensing. We're still going to have to deal with the legacy materials that we can't deal with in any other way.

Stephan?

>> STEPHAN HAMLIN-SMITH: I just know that it's 4 'til 5:00. And with regard to the notion of the licensing idea, in and of itself as a unique entity, is there any -- I haven't heard anyone say that we think that this is a bad idea to look at. Is there anyone at this table who objects to us suggesting that we have the Commission look at this idea? I mean, I understand that it does not answer our questions about fair use and Chafee and all of those things, but I think that if we can add more tools to the table, can we just do that?

>> VICE CHAIRMAN WENDORF: If the Commission wants to do that we can do that, especially if it's setup as a pilot to test out. That's exactly the kind of thing to do.

>> STEPHAN HAMLIN-SMITH: Because my sense is, and I'm sorry I can't remember her name, but the woman who came and talked to us about models for how this might work --

>> MARIA PALLANTE: Tracy.

>> STEPHAN HAMLIN-SMITH: -- my sense was that this might not be so far off in the future, that this might actually be something that could happen sooner rather than later. And if so, even if it can eliminate one little piece of one headache, that would be a step I think.

>> J. BRUCE HILDEBRAND: May I speak? One of the major moves among the publishers now is called institutional licensing. One of the major moves among the publishers now is institutional licensing, and it allows the school in lieu of going through the adoption process, the school may adopt one or more titles and one or multiple supplements and interactives and hybrids for their student body. CSU is using it massively right now. Kentucky is doing it in big chunks. And what that does is it is a pure licensing model so that they buy the rights to the digital works, whatever they are, and also in some instances the ability to print on site the textbook if the student desires one at a very low price. So the model exists. Now, what this does, though, is it transfers the license to a third party, if you would. That's all we're talking about. This is not rocket science. We know how to do it.

>> STEPHAN HAMLIN-SMITH: I understand it as a clearinghouse of sorts.

>> J. BRUCE HILDEBRAND: Well, CCC is a clearinghouse.

>> STEPHAN HAMLIN-SMITH: That's what I mean.

>> J. BRUCE HILDEBRAND: But no need to say that CCC would be the one doing it.

>> STEPHAN HAMLIN-SMITH: But somebody would do that function.

>> J. BRUCE HILDEBRAND: Yes.

>> MARIA PALLANTE: So Ashlee would go on her computer at 4:00 in the morning when she studies, and she would say, oh, I need to read this work for a class tomorrow morning. Thank God my University has a license to give me whatever I need when I need it in the format that I need it in. And she just downloads it or streams it or whatever she needs to do. That is how --

>> VICE CHAIRMAN WENDORF: Or she can find it through her library.

>> MARIA PALLANTE: Well, yeah, although I think that we learned that students work through their libraries online a lot of the times now.

>> VICE CHAIRMAN WENDORF: That's what I mean.

Gee, I hate to cut this short.

(Laughter)

So the question is do we have a license to adjourn?

(Laughter)

For the day.

>> JIM FRUCHTERMAN: No-cost license.

(Laughter)

>> VICE CHAIRMAN WENDORF: I heard that there was sufficient interest in pursuing it and the licensing and fine tuning the language to make sure that we recommended some sort of pilot related to it. I think that one of the exciting things is actually, you know, the way that it would expand getting materials to more students who actually needed them whether they met, you know, certain kinds of definitions of, you know, who they were. I think that's exciting, and there is compensation going off in the right direction. So I thank you.

The small group that's going to work on language could meet - if we would meet here at 8:00. We'll meet over here in the corner.

>> CHAIRWOMAN DIETRICH: 8:00 A.M.?

>> VICE CHAIRMAN WENDORF: Yeah, not tonight, 8:00 A.M., sorry. And we'll work on that. If we could ask just each of

us to bring in relevant language so that we can get a quick start on that.

>> GEORGE KERSCHER: Why don't we just work from what has been -- that Jim was reading.

>> VICE CHAIRMAN WENDORF: We can work with that, and some of us have some other sort of things to bring into that, but that would be good if we could share that.

>> JIM FRUCHTERMAN: I will bring that.

>> VICE CHAIRMAN WENDORF: Good, Jim. So we'll do that. We're meeting at 6:30 for those going out for dinner. Tuck?

>> TUCK TINSLEY: Jim, any feel for the number of testimonies tomorrow, or the time period?

>> VICE CHAIRMAN WENDORF: I don't know. Dave, Liz?

>> JANET: I think that we have about four people at the moment.

>> VICE CHAIRMAN WENDORF: In Jacksonville I actually went and grabbed people. So whatever works. I want to thank everyone. I think that we made real progress. I think that we got things aired today. Let's come back refreshed tomorrow and do more of the same. Okay? Thank you!

(End of meeting)